

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation )  
Against: )**

**Jerrell Lawrence Borup, M.D. )**

**Case No. 04-2013-230218**

**Physician's and Surgeon's )  
Certificate No. A 35641 )**

**Respondent )**  
\_\_\_\_\_)

**DECISION**


**The attached Stipulated Surrender of License and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on September 14, 2016.**

**IT IS SO ORDERED September 7, 2016.**

**MEDICAL BOARD OF CALIFORNIA**

**By:**

  
**Kimberly Kirchmeyer  
Executive Director**



1 KAMALA D. HARRIS  
Attorney General of California  
2 MATTHEW M. DAVIS  
Supervising Deputy Attorney General  
3 MARTIN W. HAGAN  
Deputy Attorney General  
4 State Bar No. 155553  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
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8 *Attorneys for Complainant*

9  
10 **BEFORE THE**  
11 **MEDICAL BOARD OF CALIFORNIA**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 **JERRELL LAWRENCE BORUP, M.D.**  
15 **4439 Old River Street**  
**Oceanside, CA 92057**

16 **Physician's and Surgeon's License**  
17 **No. A35641**

18 Respondent.

Case No. 04-2013-230218

OAH No. 2015110581

**STIPULATED SURRENDER OF  
LICENSE AND DISCIPLINARY ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
23 of California. She brought this action solely in her official capacity and is represented in this  
24 matter by Kamala D. Harris, Attorney General of the State of California, by Martin W. Hagan,  
25 Deputy Attorney General.

26 2. Jerrell Lawrence Borup, M.D. (respondent) is represented in this proceeding by  
27 Robert W. Frank, Esq., whose address is Neil, Dymott, Frank, McFall & Trexler, APLC, 1010  
28 Second Ave., Ste. 2500, San Diego CA 92101.



3. On or about July 23, 1980, the Medical Board of California issued Physician's and Surgeon's Certificate No. A35641 to respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 04-2013-230218 and will expire on December 31, 2017, unless renewed.

## JURISDICTION

4. On or about August 4, 2015, Accusation No. 04-2013-230218 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against respondent. A true and correct copy of Accusation No. 04-2013-230218 and all other statutorily required documents were properly served on respondent on August 4, 2015. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 04-2013-230218 is attached as Exhibit A and incorporated by reference as if fully set forth herein.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 04-2013-230218. Respondent also has carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Surrender of License and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation No. 04-2013-230218; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Having the benefit of counsel, respondent hereby voluntarily, knowingly and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 8. Respondent does not contest that, at an administrative hearing, complainant could  
3 establish a *prima facie* case with respect to the charges and allegations contained in Accusation  
4 No. 04-2013-230218, a true and correct copy of which is attached hereto as Exhibit "A," and that  
5 he has thereby subjected his Physician's and Surgeon's Certificate No. A35641 to disciplinary  
6 action. Respondent hereby surrenders his Physician's and Surgeon's Certificate No. A35641 for  
7 the Board's formal acceptance.

8 9. Respondent agrees that his Physician's and Surgeon's Certificate No. A35641 is  
9 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth  
10 in the Disciplinary Order below.

11 10. Respondent further agrees that if he ever petitions for reinstatement of his Physician's  
12 and Surgeon's Certificate No. A35641, or petitions to revoke probation or if an accusation is ever  
13 filed against him before the Medical Board of California, all of the charges and allegations  
14 contained in Accusation No. 04-2013-230218 shall be deemed true, correct, and fully admitted by  
15 respondent for purposes of any such proceeding or any other licensing proceeding involving  
16 respondent in the State of California or elsewhere.

17 11. Respondent understands that by signing this stipulation he enables the Executive  
18 Director of the Board to issue an order, on behalf of the Board, accepting the surrender of his  
19 Physician's and Surgeon's Certificate No. A35641 without further notice to, or opportunity to be  
20 heard by, respondent.

21 CONTINGENCY

22 12. Business and Professions Code section 2224, subdivision (b), provides, in pertinent  
23 part, that the Medical Board "shall delegate to its executive director the authority to adopt a . . .  
24 stipulation for surrender of a license."

25 13. This Stipulated Surrender of License and Disciplinary Order shall be subject to  
26 approval of the Executive Director on behalf of the Medical Board. The parties agree that this  
27 Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive  
28 Director for her consideration in the above-entitled matter and, further, that the Executive



1 Director shall have a reasonable period of time in which to consider and act on this Stipulated  
2 Surrender of License and Disciplinary Order after receiving it. By signing this stipulation,  
3 respondent fully understands and agrees that he may not withdraw his agreement or seek to  
4 rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board,  
5 considers and acts upon it.

6 14. The parties agree that this Stipulated Surrender of License and Disciplinary Order  
7 shall be null and void and not binding upon the parties unless approved and adopted by the  
8 Executive Director on behalf of the Board, except for this paragraph, which shall remain in full  
9 force and effect. Respondent fully understands and agrees that in deciding whether or not to  
10 approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive  
11 Director and/or the Board may receive oral and written communications from its staff and/or the  
12 Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the  
13 Executive Director, the Board, any member thereof, and/or any other person from future  
14 participation in this or any other matter affecting or involving respondent. In the event that the  
15 Executive Director on behalf of the Board does not, in her discretion, approve and adopt this  
16 Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it  
17 shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied  
18 upon or introduced in any disciplinary action by either party hereto. Respondent further agrees  
19 that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason  
20 by the Executive Director on behalf of the Board, respondent will assert no claim that the  
21 Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review,  
22 discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or  
23 of any matter or matters related hereto.

#### 24 ADDITIONAL PROVISIONS

25 15. This Stipulated Surrender of License and Disciplinary Order is intended by the parties  
26 herein to be an integrated writing representing the complete, final and exclusive embodiment of  
27 the agreements of the parties in the above-entitled matter.

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16. The parties agree that copies of this Stipulated Surrender of License and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as originals.

17. In consideration of the foregoing admissions and stipulations, the parties agree the Executive Director of the Medical Board may, without further notice to or opportunity to be heard by respondent, issue and enter the following Disciplinary Order on behalf of the Board:

## ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A35641, issued to respondent Jerrell Lawrence Borup, M.D, is surrendered and accepted by the Medical Board of California.

1. The surrender of respondent's Physician's and Surgeon's Certificate No. A35641 and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against respondent. This stipulation constitutes a record of the discipline and shall become a part of respondent's license history with the Medical Board of California.

2. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 04-2013-230218 shall be deemed to be true, correct and admitted by respondent when the Board determines whether to grant or deny the petition.

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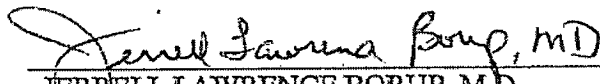


1 5. If respondent should ever apply or reapply for a new license or certification, or  
2 petition for reinstatement of a license, by any other health care licensing agency in the State of  
3 California, all of the charges and allegations contained in Accusation No. 04-2013-230218 shall  
4 be deemed to be true, correct, and admitted by respondent for the purpose of any Statement of  
5 Issues or any other proceeding seeking to deny or restrict licensure.

6 ACCEPTANCE

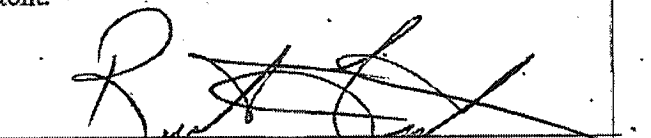
7 I have carefully read the above Stipulated Surrender of License and Disciplinary Order and  
8 have fully discussed it with my attorney Robert W. Frank, Esq. I understand the stipulation and  
9 the effect it will have on my Physician's and Surgeon's Certificate No. A35641. I enter into this  
10 Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently,  
11 and agree to be bound by the Decision and Disciplinary Order of the Medical Board of California.

12  
13 DATED: August 10, 2016

  
JERRELL LAWRENCE BORUP, M.D.  
Respondent

15 I have read and fully discussed with respondent Jerrell Lawrence Borup, M.D., the terms  
16 and conditions and other matters contained in this Stipulated Surrender of License and  
17 Disciplinary Order. I approve its form and content.

18  
19 DATED: 8-16-16

  
ROBERT W. FRANK, ESQ.  
Attorney for respondent

21  
22 ////

23 ////

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25 ////

26 ////

27 ////

28 ////



**ENDORSEMENT**

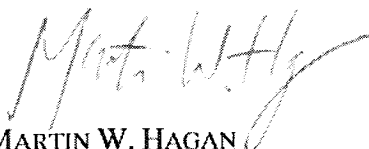
The foregoing Stipulated Surrender of License and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated:

8/17/2016

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
MATTHEW M. DAVIS  
Supervising Deputy Attorney General

  
MARTIN W. HAGAN  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 04-2013-230218**



1 KAMALA D. HARRIS  
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2 THOMAS S. LAZAR  
Supervising Deputy Attorney General  
3 MARTIN W. HAGAN  
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8 *Attorneys for Complainant*

10 BEFORE THE  
11 MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 04-2013-230218

14 JERRELL LAWRENCE BORUP, M.D.  
4439 Old River Street  
15 Oceanside, CA 92057

A C C U S A T I O N

16 Physician's and Surgeon's License  
No. A35641,

17  
18 Respondent.

19 Complainant alleges:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official  
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer  
23 Affairs (Board).

24 2. On or about July 23, 1980, the Medical Board issued Physician's and Surgeon's  
25 License Number A35641 to Jerrell Lawrence Borup, M.D. (Respondent). The Physician's and  
26 Surgeon's License was in full force and effect at all times relevant to the charges brought herein  
27 and will expire on December 31, 2015, unless renewed.

28 ////



**JURISDICTION**

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, be placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded and ordered to complete relevant educational courses, or have such other action taken in relation to discipline as the Board or an administrative law judge deems proper.

5. Section 3501<sup>1</sup> of the Code states:

“(1) ‘Board’ means the Physician Assistant Board.

“...

“(4) ‘Physician assistant’ means a person who meets the requirements of this chapter and is licensed by the board.

“(5) ‘Supervising physician’ means a physician and surgeon licensed by the Medical Board of California or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

“(6) ‘Supervision’ means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

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<sup>1</sup> California Senate Bill 1236, chapter 332, resulted in minor revisions to Business and Professions Code sections 3501 and 3502 which became effective January 1, 2013. These revisions primarily dealt with changing the designation of the Physician Assistant Committee to the Physician Assistant Board and making various conforming changes relative to the change in designation. (See Stats. 2012, c.332 (S.B. 1236, § 27).)



1           “(7) ‘Regulations’ means the rules and regulations as set forth in Chapter 13.8  
2 (commencing with Section 1399.500) of Title 16 of the California Code of  
3 Regulations.

4           “...

5           “(10) ‘Delegation of services agreement’ means the writing that delegates to a  
6 physician assistant from a supervising physician the medical services the physician  
7 assistant is authorized to perform consistent with subdivision (a) of Section  
8 1399.540 of Title 16 of the California Code of Regulations.

9           “(11) ‘Other specified medical services’ means tests or examinations  
10 performed or ordered by a physician assistant practicing in compliance with this  
11 chapter or regulations of the Medical Board of California promulgated under this  
12 chapter.

13           “(b) A physician assistant acts as an agent of the supervising physician when  
14 performing any activity authorized by this chapter or regulations adopted under  
15 this chapter.”

16       6.     Section 3502 of the Code states:

17           “(a) Notwithstanding any other provision of law, a physician assistant may perform  
18 those medical services as set forth by the regulations when the services are rendered under  
19 the supervision of a licensed physician and surgeon who is not subject to a disciplinary  
20 condition imposed by the board prohibiting that supervision or prohibiting the employment  
21 of a physician assistant.

22           “(b) Notwithstanding any other provision of law, a physician assistant  
23 performing medical services under the supervision of a physician and surgeon may  
24 assist a doctor of podiatric medicine who is a partner, shareholder, or employee in  
25 the same medical group as the supervising physician and surgeon. A physician  
26 assistant who assists a doctor of podiatric medicine pursuant to this subdivision shall  
27 do so only according to patient-specific orders from the supervising physician and  
28 surgeon. [¶] The supervising physician and surgeon shall be physically available to



1 the physician assistant for consultation when such assistance is rendered. A  
2 physician assistant assisting a doctor of podiatric medicine shall be limited to  
3 performing those duties included within the scope of practice of a doctor of podiatric  
4 medicine.

5 “(c)(1) A physician assistant and his or her supervising physician and  
6 surgeon shall establish written guidelines for the adequate supervision of the  
7 physician assistant. This requirement may be satisfied by the supervising physician  
8 and surgeon adopting protocols for some or all of the tasks performed by the  
9 physician assistant. The protocols adopted pursuant to this subdivision shall comply  
10 with the following requirements:

11 “(A) A protocol governing diagnosis and management shall, at a minimum,  
12 include the presence or absence of symptoms, signs, and other data necessary to  
13 establish a diagnosis or assessment, any appropriate tests or studies to order, drugs  
14 to recommend to the patient, and education to be provided to the patient.

15 “(B) A protocol governing procedures shall set forth the information to be  
16 provided to the patient, the nature of the consent to be obtained from the patient,  
17 the preparation and technique of the procedure, and the follow-up care.

18 “(C) Protocols shall be developed by the supervising physician and surgeon  
19 or adopted from, or referenced to, texts or other sources.

20 “(D) Protocols shall be signed and dated by the supervising physician and  
21 surgeon and the physician assistant.

22 “(2) The supervising physician and surgeon shall review, countersign, and  
23 date a sample consisting of, at a minimum, 5 percent of the medical records of  
24 patients treated by the physician assistant functioning under the protocols within  
25 30 days of the date of treatment by the physician assistant. The physician and  
26 surgeon shall select for review those cases that by diagnosis, problem, treatment,  
27 or procedure represent, in his or her judgment, the most significant risk to the  
28 patient.



1           “(3) Notwithstanding any other provision of law, the Medical Board of  
2 California or board may establish other alternative mechanisms for the adequate  
3 supervision of the physician assistant.

4           “(d) No medical services may be performed under this chapter in any of the  
5 following areas:

6           “(1) The determination of the refractive states of the human eye, or the  
7 fitting or adaptation of lenses or frames for the aid thereof.

8           “(2) The prescribing or directing the use of, or using, any optical device in  
9 connection with ocular exercises, visual training, or orthoptics.

10           “(3) The prescribing of contact lenses for, or the fitting or adaptation of  
11 contact lenses to, the human eye.

12           “(4) The practice of dentistry or dental hygiene or the work of a dental  
13 auxiliary as defined in Chapter 4 (commencing with Section 1600).

14           “(e) This section shall not be construed in a manner that shall preclude the  
15 performance of routine visual screening as defined in Section 3501.”

16           7.     Section 2052 of the Code, states:

17           “(a) Notwithstanding Section 146, any person who practices or attempts to  
18 practice, or who advertises or holds himself or herself out as practicing, any system or  
19 mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for,  
20 or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder,  
21 injury, or other physical or mental condition of any person, without having at the time  
22 of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter  
23 [Chapter 5, the Medical Practice Act], or without being authorized to perform the act  
24 pursuant to a certificate obtained in accordance with some other provision of law, is  
25 guilty of a public offense, punishable by a fine not exceeding ten thousand dollars  
26 (\$10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal  
27 Code, by imprisonment in the state prison, by imprisonment in a county jail not  
28 exceeding one year, or by both the fine and either imprisonment.



1           “(b) Any person who conspires with or aids or abets another to commit any act  
2 described in subdivision (a) is guilty of a public offense, subject to the punishment  
3 described in that subdivision.

4           “(c) The remedy provided in this section shall not preclude any other remedy  
5 provided by law.”

6           8.     Section 2234 of the Code, states:

7           “The board shall take action against any licensee who is charged with  
8 unprofessional conduct. In addition to other provisions of this article,  
9 unprofessional conduct includes, but is not limited to, the following:

10           “(a) Violating or attempting to violate, directly or indirectly, assisting in or  
11 abetting the violation of, or conspiring to violate any provision of this chapter.

12           “(b) Gross negligence.

13           “(c) Repeated negligent acts. To be repeated, there must be two or more  
14 negligent acts or omissions. An initial negligent act or omission followed by a  
15 separate and distinct departure from the applicable standard of care shall constitute  
16 repeated negligent acts.

17           “(1) An initial negligent diagnosis followed by an act or omission  
18 medically appropriate for that negligent diagnosis of the patient shall constitute a  
19 single negligent act.

20           “(2) When the standard of care requires a change in the diagnosis, act, or  
21 omission that constitutes the negligent act described in paragraph (1), including, but  
22 not limited to, a reevaluation of the diagnosis or a change in treatment, and the  
23 licensee's conduct departs from the applicable standard of care, each departure  
24 constitutes a separate and distinct breach of the standard of care.

25           “ . . .

26           “(e) The commission of any act involving dishonesty or corruption which is  
27 substantially related to the qualifications, functions, or duties of a physician and  
28 surgeon.



1           “(f) Any action or conduct which would have warranted the denial of a  
2       certificate.

3           “....”

4           9.     Unprofessional conduct under California Business and Professions Code section  
5       2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct  
6       which is unbecoming to a member in good standing of the medical profession, and which  
7       demonstrates an unfitness to practice medicine.<sup>2</sup>

8           10.    Section 2264 of the Code, states:

9           “The employing, directly or indirectly, the aiding, or the abetting of any  
10       unlicensed person or any suspended, revoked, or unlicensed practitioner to engage  
11       in the practice of medicine or any other mode of treating the sick or afflicted which  
12       requires a license to practice constitutes unprofessional conduct.”

13          11.    Section 2271 of the Code, states:

14          “Any advertising in violation of Section 17500 relating to false or  
15       misleading advertising, constitutes unprofessional conduct.

16          12.    Section 651 of the Code, states:

17          “(a) It is unlawful for any person licensed under this division or under any  
18       initiative act referred to in this division to disseminate or cause to be disseminated  
19       any form of public communication containing a false, fraudulent, misleading, or  
20       deceptive statement, claim, or image for the purpose of or likely to induce, directly  
21       or indirectly, the rendering of professional services or furnishing of products in  
22       connection with the professional practice or business for which he or she is  
23       licensed. A “public communication” as used in this section includes, but is not  
24       limited to, communication by means of mail, television, radio, motion picture,  
25       newspaper, book, list or directory of healing arts practitioners, Internet, or other  
26       electronic communication.

27       

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28       <sup>2</sup> *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.



1           “(b) A false, fraudulent, misleading, or deceptive statement, claim, or image  
2 includes a statement or claim that does any of the following:

3           “(1) Contains a misrepresentation of fact.

4           “(2) Is likely to mislead or deceive because of a failure to disclose material  
5 facts.

6           “ . . .

7           “(5) Contains other representations or implications that in reasonable  
8 probability will cause an ordinarily prudent person to misunderstand or be  
9 deceived.

10          “ . . . .”

11          “(8)(e) Any person so licensed may not use any professional card,  
12 professional announcement card, office sign, letterhead, telephone directory listing,  
13 medical list, medical directory listing, or a similar professional notice or device if it  
14 includes a statement or claim that is false, fraudulent, misleading, or deceptive  
15 within the meaning of subdivision (b).

16          “(g) Any violation of this section by a person so licensed shall constitute  
17 good cause for revocation or suspension of his or her license or other disciplinary  
18 action.

19          “ . . . .”

20          13.     Section 17500 of the Code states:

21                “It is unlawful for any person, firm, corporation or association, or any  
22 employee thereof with intent directly or indirectly to dispose of real or personal  
23 property or to perform services, professional or otherwise, or anything of any  
24 nature whatsoever or to induce the public to enter into any obligation relating  
25 thereto, to make or disseminate or cause to be made or disseminated before the  
26 public in this state, or to make or disseminate or cause to be made or disseminated  
27 from this state before the public in any state, in any newspaper or other  
28 publication, or any advertising device, or by public outcry or proclamation, or in



1 any other manner or means whatever, including over the Internet, any statement,  
2 concerning that real or personal property or those services, professional or  
3 otherwise, or concerning any circumstance or matter of fact connected with the  
4 proposed performance or disposition thereof, which is untrue or misleading, and  
5 which is known, or which by the exercise of reasonable care should be known, to  
6 be untrue or misleading, or for any person, firm, or corporation to so make or  
7 disseminate or cause to be so made or disseminated any such statement as part of  
8 a plan or scheme with the intent not to sell that personal property or those  
9 services, professional or otherwise, so advertised at the price stated therein, or as  
10 so advertised. Any violation of the provisions of this section is a misdemeanor  
11 punishable by imprisonment in the county jail not exceeding six months, or by a  
12 fine not exceeding two thousand five hundred dollars (\$2,500), or by both that  
13 imprisonment and fine.”

14 14. California Code of Regulations, title 16, section 1399.540, states:

15 “(a) A physician assistant may only provide those medical services which he  
16 or she is competent to perform and which are consistent with the physician  
17 assistant’s education, training, and experience, and which are delegated in writing  
18 by a supervising physician who is responsible for the patients cared for by that  
19 physician assistant.

20 “(b) The writing which delegates the medical services shall be known as a  
21 delegation of services agreement. A delegation of services agreement shall be  
22 signed and dated by the physician assistant and each supervising physician. A  
23 delegation of services agreement may be signed by more than one supervising  
24 physician only if the same medical services have been delegated by each  
25 supervising physician. A physician assistant may provide medical services pursuant  
26 to more than one delegation of services agreement.

27 “...

28 ////



1           “(d) A physician assistant shall consult with a physician regarding any task,  
2           procedure or diagnostic problem which the physician assistant determines exceeds  
3           his or her level of competence or shall refer such cases to a physician.”

4           15. California Code of Regulations, title 16, section 1399.541, states:

5           “Because physician assistant practice is directed by a supervising physician,  
6           and a physician assistant acts as an agent for that physician, the orders given and  
7           tasks performed by a physician assistant shall be considered the same as if they had  
8           been given and performed by the supervising physician. Unless otherwise specified  
9           in these regulations or in the delegation or protocols, these orders may be initiated  
10          without the prior patient specific order of the supervising physician. In any setting,  
11          including for example, any licensed health facility, out-patient settings, patients’  
12          residences, residential facilities, and hospices, as applicable, a physician assistant  
13          may, pursuant to a delegation and protocols where present:

14          “(a) Take a patient history; perform a physical examination and make an  
15          assessment and diagnosis therefrom; initiate, review and revise treatment and  
16          therapy plans including plans for those services described in Section 1399.541(b)  
17          through Section 1399.541(i) inclusive; and record and present pertinent data in a  
18          manner meaningful to the physician.

19          “(b) Order or transmit an order for x-ray, other studies, therapeutic diets,  
20          physical therapy, occupational therapy, respiratory therapy, and nursing services.

21          “(c) Order, transmit an order for, perform, or assist in the performance of  
22          laboratory procedures, screening procedures and therapeutic procedures.

23          “(d) Recognize and evaluate situations which call for immediate attention of  
24          a physician and institute, when necessary, treatment procedures essential for the life  
25          of the patient.

26          “(e) Instruct and counsel patients regarding matters pertaining to their  
27          physical and mental health. Counseling may include topics such as medications,  
28          diets, social habits, family planning, normal growth and development, aging, and



1 understanding of and long-term management of their diseases.

2 “(f) Initiate arrangements for admissions, complete forms and charts  
3 pertinent to the patient’s medical record, and provide services to patients requiring  
4 continuing care, including patients at home.

5 “(g) Initiate and facilitate the referral of patients to the appropriate health  
6 facilities, agencies, and resources of the community.

7 “(h) Administer or provide medication to a patient, or issue or transmit drug  
8 orders orally or in writing in accordance with the provisions of subdivisions (a)-(f),  
9 inclusive, of Section 3502.1 of the Code.

10 “(i)(1) Perform surgical procedures without the personal presence of the  
11 supervising physician which are customarily performed under local anesthesia. Prior  
12 to delegating any such surgical procedures, the supervising physician shall review  
13 documentation which indicates that the physician assistant is trained to perform the  
14 surgical procedures. All other surgical procedures requiring other forms of  
15 anesthesia may be performed by a physician assistant only in the personal presence  
16 of an approved supervising physician.

17 “(2) A physician assistant may also act as first or second assistant in surgery  
18 under the supervision of an approved supervising physician.”

19 16. California Code of Regulations, title 16, section 1399.542, states:

20 “The delegation of procedures to a physician assistant under Section  
21 1399.541, subsections (b) and (c) shall not relieve the supervising physician of  
22 primary continued responsibility for the welfare of the patient.”

23 17. California Code of Regulations, title 16, section 1399.545, states:

24 “(a) A supervising physician shall be available in person or by electronic  
25 communication at all times when the physician assistant is caring for patients.

26 “(b) A supervising physician shall delegate to a physician assistant only those  
27 tasks and procedures consistent with the supervising physician’s specialty or usual  
28 and customary practice and with the patient’s health and condition.



1           “(c) A supervising physician shall observe or review evidence of the  
2 physician assistant’s performance of all tasks and procedures to be delegated to  
3 the physician assistant until assured of competency.

4           “(d) The physician assistant and the supervising physician shall establish in  
5 writing transport and back-up procedures for the immediate care of patients who are  
6 in need of emergency care beyond the physician assistant’s scope of practice for  
7 such times when a supervising physician is not on the premises.

8           “(e) A physician assistant and his or her supervising physician shall establish  
9 in writing guidelines for the adequate supervision of the physician assistant which  
10 shall include one or more of the following mechanisms:

11           “(1) Examination of the patient by a supervising physician the same day as  
12 care is given by the physician assistant;

13           “(2) Countersignature and dating of all medical records written by the  
14 physician assistant within thirty (30) days that the care was given by the physician  
15 assistant;

16           “(3) The supervising physician may adopt protocols to govern the  
17 performance of a physician assistant for some or all tasks. The minimum content  
18 for a protocol governing diagnosis and management as referred to in this section  
19 shall include the presence or absence of symptoms, signs, and other data necessary  
20 to establish a diagnosis or assessment, any appropriate tests or studies to order,  
21 drugs to recommend to the patient, and education to be given the patient. For  
22 protocols governing procedures, the protocol shall state the information to be  
23 given the patient, the nature of the consent to be obtained from the patient, the  
24 preparation and technique of the procedure, and the follow-up care. Protocols  
25 shall be developed by the physician, adopted from, or referenced to, texts or other  
26 sources. Protocols shall be signed and dated by the supervising physician and the  
27 physician assistant. The supervising physician shall review, countersign, and date  
28 a minimum of 5% sample of medical records of patients treated by the physician



1 assistant functioning under these protocols within thirty (30) days. The physician  
2 shall select for review those cases which by diagnosis, problem, treatment or  
3 procedure represent, in his or her judgment, the most significant risk to the  
4 patient;

5 “(4) Other mechanisms approved in advance by the board.

6 “(f) The supervising physician has continuing responsibility to follow the progress  
7 of the patient and to make sure that the physician assistant does not function  
8 autonomously. The supervising physician shall be responsible for all medical services  
9 provided by a physician assistant under his or her supervision.”

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Aiding and Abetting Unlicensed Practice of Medicine)**

12 18. Respondent is subject to disciplinary action under sections 2227 and 2234, as  
13 defined by section 2052, subdivision (b), 3501 and 3502, of the Code, and California Code of  
14 Regulations, title 16, sections 1399.540, 1399.541, and 1399.545, in that he aided and abetted the  
15 unlicensed practice of medicine, as more particularly alleged hereinafter:

16 19. On or about August 3, 2010, Physician Assistant R.D. formed Pacific Liposculpture,  
17 Inc., a duly registered domestic corporation in the State of California. According to documents  
18 filed with the State of California, the address for Pacific Liposculpture, Inc., was listed as 8899  
19 University Center Lane, Suite 250, San Diego, CA 92122, and the stated purpose of the business  
20 was “Liposculpture.”<sup>3</sup> Physician Assistant R.D. was identified as holding the positions of Chief  
21 Executive Officer, Secretary and Financial Officer for Pacific Liposculpture, Inc.

22 ////

23 ////

24 ////

25 ////

26 \_\_\_\_\_  
27 <sup>3</sup> The State of California, Secretary of State, Statement of Information form filed by Physician  
28 Assistant R.D. on May 16, 2013, modified the type of business description to “Management Services  
for Liposculpture office.”



1           20. After issues arose with Physician Assistant R.D.'s former "supervising physician,"  
2 Physician Assistant R.D. sought out another physician to fill the role as his new "supervising  
3 physician," and as the "Medical Director" in furtherance of the Pacific Liposculpture<sup>4</sup> enterprise.  
4 An advertisement was placed on Craigslist and responses were received from approximately five  
5 candidates, one of whom was respondent. The list of potential candidates was narrowed down to  
6 respondent and another physician with one of the two to be selected by Physician Assistant R.D.  
7 as the "supervising physician" and "Medical Director" for Pacific Liposculpture. As made clear  
8 during the course of discussions, respondent had no interest in being involved in patient care or  
9 performing any of the liposuction procedures. Indeed, respondent had been retired and indicated  
10 he was physically limited in his ability to practice medicine based on a previous health condition.  
11 After Physician Assistant R.D. and respondent met with each other, they entered into their  
12 business arrangement concerning Pacific Liposculpture. Respondent was selected as the  
13 "supervising physician" and "Medical Director" primarily because he had no interest in being  
14 involved in patient care or in performing any of the liposuction procedures. A delegation of  
15 services agreement was prepared and it was agreed between the two that Physician Assistant R.D.  
16 would perform all of the liposuction procedures at Pacific Liposculpture.

17           21. On or about December 21, 2010, respondent applied for a fictitious name permit  
18 (FNP) for the business name of Pacific Liposculpture, which also had the business location of  
19 8899 University Center Lane, Suite 250, San Diego, CA 92122. The FNP request was approved  
20 by the Board, effective January 14, 2011, with an expiration date of January 30, 2013, unless  
21 renewed. According to Physician Assistant R.D., he was employed by Pacific Liposculpture as an  
22 independent contractor under his dba name of Davis Medical, wherein he performed "all the lipo  
23 procedures" at Pacific Liposculpture.

24           22. During the time that respondent was the supervising physician of Physician Assistant  
25 R.D., and the Medical Director of Pacific Liposculpture, he had no set work days, he never  
26

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27           <sup>4</sup> Unless otherwise noted, Pacific Liposculpture shall generally refer to the Pacific  
28 Liposculpture operation including, but not limited to, Pacific Liposculpture, Pacific Liposculpture,  
Inc., Davis Medical, and respondent and Physician Assistant R.D., as individuals.



1 consulted with any of the patients prior to their procedures, never performed any of the  
2 liposuction procedures, was not involved in any of the post-operative care of the Pacific  
3 Liposculpture patients, and his "supervision" consisted primarily of periodic review of the patient  
4 records.<sup>5</sup>

5 23. Pacific Liposculpture advertised, among other things, that "our team is comprised of  
6 only the most skilled medical professionals who long ago decided to specialize in advanced  
7 liposculpture (lipo) techniques" and our "body contouring procedures achieve amazing results in a  
8 spa-like outpatient setting." The Pacific Liposculpture's website identified respondent as "your  
9 Pacific Liposculpture Medical Director" and touted that he was "an accomplished board certified  
10 physician with more than 20 years experience" and that he, "along with his highly trained  
11 liposuction team, will help to minimize your risks while offering you the best possible care all  
12 under local anesthesia." The website further advertised that "[b]ecause of [respondent's]  
13 advanced training and experience in liposuction technology, Pacific Lipo's procedures  
14 significantly reduce pain, swelling and bruising, while providing you with smoother results,  
15 tighter skin, permanent improvement and no unsightly scars." Pacific Liposculpture's advertising  
16 further proclaimed that "Dr. Borup supervises a team of highly trained liposuctionists with a  
17 combined experience of well over 10,000 lipo procedures" and "[a]s Medical Director of Pacific  
18 Liposculpture, Dr. Borup offers patients a lifetime of experience and knowledge in his state-of-  
19 the-art outpatient surgical setting." The Pacific Liposculpture advertising concerning respondent  
20 was false and misleading. Respondent, in truth and fact, did not specialize in any advanced  
21 liposuction techniques, did not have advanced training and experience in liposuction technology,

22 <sup>5</sup> As part of the Board's investigation of this matter, respondent appeared for a physician  
23 interview on July 29, 2014, and was asked, among other things, "what sort of tasks would you  
24 perform in regards to supervising his [Physician Assistant R.D.'s] work? In response to the  
25 question, respondent stated "I would mostly review charts...and if he [Physician Assistant R.D.]  
26 had any specific questions, I would answer them." When asked "Did you do anything else  
27 besides chart review as far as... supervising [Physician Assistant R.D.]? Respondent answered  
28 "Just stick my head in once in a while and see [how] things are going, and ask him how things  
are." When asked how many hours that Physician Assistant R.D. worked at Pacific  
Liposculpture, respondent replied "that's hard to say. I really don't know. I think you'd have to  
ask him." When asked "when you were there [at Pacific Liposculpture] in that time frame, 2010  
to 2013, how many employees approximately were working there? Do you know?" respondent  
answered, "I have no idea."



1 did not supervise a highly trained team of liposuctionists, and the "outpatient surgical setting"  
2 was not "his" and it was not "state-of-the art." In truth and fact, respondent was an  
3 anesthesiologist, and not a formally trained surgeon, he had not practiced medicine for  
4 approximately ten years because he had been recovering from a medical condition, and his  
5 training in liposuction was limited to a weekend course in Florida that he took in September 2010.  
6 The "highly trained team of liposuctionists" consisted solely of Physician Assistant R.D. whose  
7 "qualifications" were dubious, at best, as discussed more fully below. Moreover, respondent  
8 never had any intention of performing any liposuction procedures at Pacific Liposculpture and, in  
9 truth and fact, he never performed a single liposuction procedure for the three years he was the  
10 Medical Director at Pacific Liposculpture. Instead, respondent delegated all of the liposuction  
11 surgeries to Physician Assistant R.D., who held the title of "Director of Surgery" at Pacific  
12 Liposculpture. The advertised "state of the art surgery center" was not an accredited surgery  
13 center and consisted of a single room where the liposuctions were performed. The "surgery  
14 center" contained equipment that Physician Assistant R.D. acquired through his management  
15 services organization (MSO) and did not have a fully stocked crash cart to be used in case of a  
16 medical emergency.

17 24. Physician Assistant R.D., who performed all of the liposuction procedures while  
18 respondent was his "supervising" physician, has no formal surgical training. As a physician  
19 assistant, he has not attended an accredited medical school nor has he ever finished a medical  
20 internship program, surgical residency program or any fellowship program in cosmetic and/or  
21 plastic surgery as his "Director of Surgery" title implies. According to Physician Assistant R.D.'s  
22 curriculum vitae, he received his "cosmetic surgery" experience as physician assistant while  
23 working at Beverly Hills Liposculpture and then with a Dr. K.C. Beverly Hills Liposculpture was  
24 established by Dr. C.B.,<sup>6</sup> a radiologist, who ultimately surrendered his medical license after being  
25 convicted of practicing medicine without a license by aiding and abetting the practice of medicine

26 <sup>6</sup> Physician Assistant R.D.'s curriculum vitae omits the name of Dr. C.B. while his curriculum  
27 vitae lists the names of the other physicians that respondent was associated with in performing  
28 liposuction procedures.



1 by an unlicensed person. In surrendering his medical license, Dr. C.B. admitted to aiding and  
2 abetting the unlicensed practice of medicine. The business operation at Beverly Hills  
3 Liposculpture was similar, in many respects, to Pacific Liposculpture, with the procurement of an  
4 upscale office space, heavy advertising, and medical procedures that were not performed by a  
5 formally trained and skilled cosmetic and/or plastic surgeon.<sup>7</sup> Physician Assistant R.D.'s  
6 curriculum vitae also indicates he worked with Dr. K.C. from approximately March 2009 to  
7 September 2009. Dr. K.C. was formerly board certified in emergency medicine and had no  
8 formal training in cosmetic or plastic surgery. His liposuction experience was limited to a couple  
9 of two to three day courses in liposuction in 2007 and 2009.

10 25. Pacific Liposculpture advertises heavily through various forums, including the  
11 internet and social media, and offers various package deals including, but not limited to, the  
12 "Pacific Mommy Makeover" which offers "Upper and Lower Abdomen Love Handles, Flanks  
13 and Hips for \$5,995 – All Inclusive\*"<sup>8</sup> and the "Pacific Manly Makeover" which offers "Upper  
14 and Lower Abdomen Love Handles, Flanks and Chest for \$6,500 – All Inclusive\*" Pacific  
15 Liposculpture also advertises how patients can "Get Free Lipo With These Easy Steps" which  
16 includes registering by filling out the "Free Lipo Registry" form; preparing a short story or  
17 statement as to "why you, a friend or family member, deserve free lipo with Pacific Lipo," and,  
18 most importantly; "Promot[ing] Yourself" with tips on how to "increase your chances" and  
19 "Promote Your Free Lipo Story."<sup>9</sup> Some of the Pacific Liposculpture testimonials and Yelp<sup>10</sup>  
20 reviews refer to Physician Assistant R.D. as "Dr. Rod" and "doc."

21 <sup>7</sup> The liposculpture procedures, which are, in actuality, liposuction surgeries, were performed  
22 at "a swank office in Beverly Hills' Rodeo Drive" where the liposuction was advertised as an  
23 advanced technique with "mailings showing before-and-after pictures of women's love handles,  
24 thighs and abdomens." See generally, *What to Know Before Going Under the Liposuction Knife* at  
[www.wsj.com/news/articles/SB123483369375096025](http://www.wsj.com/news/articles/SB123483369375096025) and *Nipped, Tucked and Wide Awake* at  
[www.nbcnews.com/id/40950317/ns/health-womens\\_health/#.VI9n5tF0yic](http://www.nbcnews.com/id/40950317/ns/health-womens_health/#.VI9n5tF0yic).

25 <sup>8</sup> The asterisk (\*) advised potential customers that "Patient may be subject to additional BMI  
[body mass index] charges."

26 <sup>9</sup> To "promote yourself," Pacific Liposculpture recommends that contestants "Post that same  
27 essay on our various Social Media pages and encourage your friends and family to like your story and  
28 comment on why you deserve it. The more involved you become with Pacific Lipo and the more  
support your story has, the better your chances of winning!" Pacific Liposculpture also offers "Some  
(continued...)"



26. Pacific Liposculpture's website at [www.pacificlipo.com](http://www.pacificlipo.com) identified Physician Assistant R.D. as the "Director of Surgery for various lipo procedures at Pacific Liposculpture, a cosmetic surgery firm based out of San Diego, California" and made numerous references to Physician Assistant R.D. as the "Director of Surgery" for Pacific Liposculpture. The Pacific Liposculpture website, which was owned and managed by Physician Assistant R.D., boasts of "over 15,000 procedures performed" and has several photographs and videos of Physician Assistant R.D. in his surgical scrubs. The website, among other things, states that patients can have "virtual consultations," it provides before and after photos, has links to the Pacific Liposculpture blog, has various pricing and financing options, and provides the option for potential patients and/or actual patients to view and/or create patient testimonials. While on the website, potential patients can click on the "Video and Photos" tab where they can view various videos and photo galleries or they can "visit [Pacific Liposculpture's] YouTube Channel to see more videos of different procedures & testimonials." The website's photo galleries include the "Pacific Lipo Before & After Pictures" and the "Happy Patients with Happy Results" gallery which contains photographs of patients by themselves or, in some of the photos, with Physician Assistant R.D. next to the patient in his surgical scrubs with one or both of them holding a canister or canisters of the fat that was extracted from the patient's body. The Pacific Liposculpture videos, which can be viewed online or by using the link to YouTube, promote, among other things, Physician Assistant R.D.'s skill in performing the liposculpture procedures, the benefits of the liposculpture procedure, and the pain-free nature of liposuction. In some of the

(...continued)

Tips on How to Promote Your Free Lipo Story" which includes "[s]hare your story on our Facebook wall, have friends support you by 'liking' your story and commenting on why you deserve free lipo [include a picture to grab more attention]; [p]ost your Story on our Events page on the Pacific Lipo Blogspot. Your friends can reply to your post and comment on why you deserve free lipo[:] [and] [g]o all out and take a photo of video of yourself sharing your story and post it on YouTube with the title of your essay. You can promote that link on our Facebook and have your friends vote not only on Facebook, but on your YouTube as well!" (See <http://roddavispa.wordpress.com>) (12-12-2014).

<sup>10</sup> Physician Assistant R.D. clarified some of these references on Yelp with some posts of his own in August 2014, which stated, in pertinent part, "[j]ust a reminder that I'm a Physician Assistant so no need to call me Doctor" or words to that effect. The references to respondent as "Dr. Rod" or "doc" had remained in place for approximately two to three years before being clarified by respondent.



1 videos, "sexy Terry" tells the viewing public the liposuction is "no pain, all gain." Another  
2 patient informs viewers that the liposuction "feels like a day at the spa...like getting a massage,"  
3 there is "no pain, no discomfort" and she's "just hanging out." In another video, viewers can  
4 watch "Terry," one of Pacific Liposculpture's medical assistants, get liposuction on her inner  
5 thigh area. In many of these videos, Physician Assistant R.D. is prominently featured in his  
6 surgical scrubs while performing the actual liposuction (liposculpture) surgeries on patients. In  
7 some of these videos, Physician Assistant R.D. introduces himself as the "Director of Surgery" for  
8 Pacific Liposculpture and may or may not identify himself as a physician assistant. On those  
9 limited occasions in the videos when Physician Assistant R.D. does makes reference to his  
10 physician assistant qualifications, it is through the use of a "PA-C" next to his name in the text of  
11 the video, or there is a passing reference to him being a "P.A." with no indication to the general  
12 public as to what "PA-C" or "P.A." means or that he is not a licensed physician. In some of the  
13 videos, there is no introduction of Physician Assistant R.D. at all and no mention of Physician  
14 Assistant R.D.'s qualifications or that he is a physician assistant, and not a licensed physician.

15 **PATIENT L.W.**

16 27. At some time in March or early-April 2011, patient L.W., who resided at the time in  
17 Arizona, became interested in possibly having liposuction on his abdomen area. Patient L.W.  
18 searched the internet and came across the website for Pacific Liposculpture which, among other  
19 things, advertised Physician Assistant R.D. as the Director of Surgery. Patient L.W. was  
20 impressed with the appearance of the facilities as advertised on the website. Patient L.W. called  
21 Pacific Liposculpture and spoke to Stephanie who informed him Pacific Liposculpture only used  
22 state-of-the-art equipment and they had done over 10,000 procedures. After reviewing the  
23 website, and speaking with Stephanie, patient L.W. was impressed, made a \$250 deposit, and  
24 scheduled an appointment to have his liposuction performed at Pacific Liposculpture.

25 28. On or about April 14, 2011, patient L.W. arrived from Arizona and drove himself to  
26 Pacific Liposculpture for his initial consultation and to have his liposuction surgery performed on  
27 his abdomen and love-handle areas. Prior to the consultation, patient L.W. was given paperwork  
28 to fill out which included, but was not limited to, a Payment Agreement and Cancellation Form



1 and an Informed Consent Liposuction form. The Payment Agreement and Cancellation Form  
2 provided that “[p]ayment is due in full prior to Liposuction surgery” and that “if you cancel your  
3 appointment with less than 72 hours notice, your credit card will be charged a \$500.00 fee.” By  
4 this point in time, of course, the 72 hour period to cancel had already expired. The Informed  
5 Consent Liposuction form indicated, among other things, that there were various risks associated  
6 with liposuction and “I hereby authorize Dr. Jerrell Borup, MD, [Physician Assistant R.D.], PA,  
7 and such assistants as may be selected to perform the procedure or treatment.”<sup>11</sup> The “Risks of  
8 Liposuction Surgery” section of the Informed Consent Liposuction form noted that “every  
9 surgical procedure involves a certain amount of risk, and it is important that you understand the  
10 risks involved with liposuction” which were described on the informed consent form as including,  
11 among other things, “to have a bleeding episode during or after surgery, infection, skin scarring,  
12 diminishment or loss of skin sensation, skin discoloration and swelling, skin contour  
13 irregularities, seroma, “fluid overload or systemic reaction” associated with the tumescent  
14 liposuction surgery,<sup>12</sup> pulmonary complications described as being a “possibly fatal  
15 complication,”<sup>13</sup> “burns and tissue damage” from the ultrasonic energy and cannulas, “cannula  
16 fragmentation,” and other “unknown risks” associated with the liposuction surgery.

17  
18 <sup>11</sup> This provision of Pacific Liposculpture, Inc.’s informed consent form was later  
19 amended. The amended section, which was used for some other patients, such as patient S.M.  
20 herein, provided “I hereby authorize Dr. Jerrell Borup, MD, OR [Physician Assistant R.D.] and  
such other qualified assistants as may be selected to perform the procedure or treatment.” In truth  
and fact, Physician Assistant R.D. was the one who was performing all of the liposuction  
procedures. (Emphasis added.)

21 <sup>12</sup> Specifically, the “Tumescent liposuction” section of the informed consent form stated,  
22 “Tumescent liposuction – There is the possibility that large volume of fluid containing dilute local  
23 anesthetic drugs and epinephrine that is injected into fatty deposits during surgery may contribute  
24 to fluid overload or systemic reaction to these medications. Additional treatment including  
hospitalization may be necessary.” The “Tumescent liposuction” section of the informed consent  
forms were the same for patients N.C. and S.M. and, thus, will not be repeated herein.

25 <sup>13</sup> Specifically, the “pulmonary complications” section of the informed consent form  
26 stated, “Pulmonary complications – Fat embolism syndrome occurs when fat droplets are trapped  
27 in the lungs. This is a very rare and possibly fatal combination of suction assisted lipectomy.  
28 Pulmonary complications may occur secondary to both blood clots (pulmonary emboli) or partial  
collapse of the lungs after general anesthesia. Should either of these complications occur, you  
may require hospitalization and additional treatment. Pulmonary emboli can be life threatening or  
fatal in some circumstances.”



1           29.     After signing the pre-procedure paperwork, patient L.W. was escorted into the room  
2 where his liposuction surgery would be performed, where his blood pressure, height and weight  
3 were recorded, and measurements were taken of his upper and lower abdomen. When Physician  
4 Assistant R.D. arrived, he told patient L.W. that he was the "Chief of Surgery" and further stated  
5 he was a physician's assistant and not a medical doctor. At this point, patient was not overly  
6 concerned that Physician Assistant R.D. would be performing his liposuction procedure because  
7 he was told that the scheduled liposuction was a relatively minor procedure, Physician Assistant  
8 R.D. claimed to have performed liposuction on numerous occasions, and he was told there was  
9 going to be a supervising physician onsite. The pre-surgery consultation with Physician Assistant  
10 R.D. lasted approximately ten minutes.

11           30.     According to Physician Assistant R.D.'s Liposuction Procedure Note of April 14,  
12 2011, Physician Assistant R.D. gave patient L.W. 100 milligrams (mg) of Atenolol and infiltrated  
13 him with 2400 cc's of tumescent anesthetic solution in preparation for the liposuction surgery  
14 targeting his upper and lower abdomen areas and his love handle areas. As part of the liposuction  
15 procedure, Physician Assistant R.D. removed 350 cc's of fat from the left abdomen area, 350 cc's  
16 from the right abdomen area; 200 cc's from the left love handle area and 200 cc's from the right  
17 love handle area. According to patient L.W., he experienced moderate pain during the procedure  
18 which required additional pain medication. There was no supervising physician present when the  
19 liposuction was performed and the patient never spoke with any supervising physician during his  
20 course of treatment. The procedure had a notation of follow-up in seven days. The certified  
21 medical records fail to indicate that any follow-up took place seven days later.<sup>14</sup>

22           31.     Approximately three to four months after the liposuction surgery, patient L.W. was  
23 still feeling pain around the areas where the liposuction was performed and placed a call into  
24 Physician Assistant R.D.<sup>15</sup> According to patient L.W., Physician Assistant R.D. assured him

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25  
26           <sup>14</sup> There was also no notation of any follow up at the one, three or six month post-operation  
timeframes.

27           <sup>15</sup> Patient L.W. was initially advised he might have slight pain around the procedure areas  
28 for three to four months.



1 everything was fine and the pain may last more than three to four months. Physician Assistant  
2 R.D. recommended that patient L.W. take Aleve twice-a-day to relieve any inflammation he  
3 might be experiencing and told patient L.W. to call back at the nine to twelve month post-  
4 operative mark if he was still experiencing pain. According to patient L.W., he had never  
5 experienced such pain prior to the liposuction surgery and he could no longer do anything which  
6 required much physical activity due to the pain. The certified medical records fail to indicate that  
7 Physician Assistant R.D. followed up at this time with respondent, his supervising physician,  
8 despite the fact that the Delegation of Service Agreement (DSA) provides, under the  
9 "Consultation Requirements" section, that "[t]he PA is required to always and immediately seek  
10 consultation on the following types of patients and situations...[c]omplications with anesthesia,  
11 sedation or procedure."<sup>16</sup>

12 32. On or about February 23, 2012, patient L.W. followed up again with Physician  
13 Assistant R.D. Patient L.W. complained of lumpiness in his abdomen area and that he was still  
14 experiencing pain approximately 10 months after his liposuction surgery. According to Physician  
15 Assistant R.D., patient L.W. disclosed to Physician Assistant R.D. that he had a history of  
16 Crohn's disease. Physician Assistant R.D. examined the liposuction areas and could see no  
17 problems with any lumpiness. Physician Assistant R.D.'s assessment was that "there was a good  
18 outcome from the lipo procedure." In regard to the complaint of residual pain, Physician  
19 Assistant R.D. recommended that patient L.W. follow-up with his physician regarding his  
20 Crohn's disease and/or see a psychiatrist to discuss the issue of his pain in further detail.  
21 Physician Assistant R.D. also recommended endermologie, a mechanical messaging process,  
22 which purportedly can be used to address lumpiness or uneven skin appearance. The certified  
23 medical records fail to indicate that Physician Assistant R.D. consulted with respondent, his  
24 supervising physician, about these complications at this time.

25 ////

26 <sup>16</sup> The DSA provides that Physician Assistant R.D. must "always and immediately" seek  
27 consultation with his supervising physician in the following situations: "high risk patients,"  
28 "complications with anesthesia, sedation or procedure," "patient's desire to see physician" or "any  
condition which the PA feels exceeds his/her ability to manage, etc." (DSA, at ¶ V.)



1           33.       On or about January 10, 2013, patient L.W. underwent umbilical hernia repair  
2 surgery in Phoenix, Arizona, with placement of a graft to repair a "small umbilical hernia sac."

3           34.       On or about February 6, 2013, patient L.W. requested a copy of his medical records  
4 from Physician Assistant R.D. and stated he was still having soreness and swelling which he  
5 attributed to the liposuction surgery. According to Physician Assistant R.D., patient L.W. told  
6 him that "you must have clipped something" and further indicated that he had been to several  
7 doctors and "they can't find anything." Physician Assistant R.D. recommended that patient L.W.  
8 continue to follow up with his physicians and sent the patient a copy of his medical records.

9           35.       On or about February 15, 2013, Physician Assistant R.D. added an "addendum" to  
10 his follow-up note of February 6, 2013, indicating "F/U [follow-up] Dr. Borup today pt [patient]  
11 still c/o [complains of] soreness & to F/U [with] MD [doctor] in AZ [Arizona]." There was no  
12 chart notation to indicate specifically what was discussed with Physician Assistant R.D.'s  
13 supervising physician and what, if any, recommendations there were from respondent as the  
14 supervising physician.

15           **PATIENT N.C.**

16           36.       On or about September or early-October 2011, patient N.C., a then-25 year old  
17 female, contacted Pacific Liposculpture about liposuction surgery for her abdomen area and to get  
18 "a better idea of what the financials/costs will be." The patient was preparing to go on her  
19 honeymoon to Cancun, Mexico, and wanted to be "bathing suit ready." Patient N.C. spoke with a  
20 Pacific Liposculpture associate by the name of Stephanie who advised her the total cost of the  
21 liposuction would be \$1,500 which included the costs for the procedure, medications and any  
22 required body wraps. Patient N.C. emphasized to Stephanie that she needed to be completely  
23 healed within three weeks or she would not go through with the procedure. Stephanie told patient  
24 N.C. she would be able to return to work in two days and also told her that one of her co-workers  
25 had a similar procedure done and was able to return to work the next day. Patient N.C. was  
26 advised, among other things, that her liposuction would be done under a local anesthesia, the  
27 procedure would be performed by Physician Assistant R.D., who would be overseen by a  
28 physician, and that Physician Assistant R.D. had 10 to 15 years experience performing



1 liposuctions with no complaints or patient deaths. After several conversations with Stephanie,  
2 patient N.C. felt comfortable enough to proceed with the liposuction and an appointment was  
3 scheduled.

4 37. On or about October 13, 2011, patient N.C. arrived at Pacific Liposculpture for her  
5 liposuction procedure. She checked-in and was charged \$1,500 for the liposuction that was to be  
6 performed. Patient N.C. was also provided with an informed consent form that she signed which  
7 indicated "I hereby authorize Dr. Jerrell Borup, MD, [Physician Assistant R.D.], PA, and such  
8 assistants as may be selected to perform the procedure or treatment." The "Risks of Liposuction  
9 Surgery" section of the Informed Consent Liposuction form noted that "every surgical procedure  
10 involves a certain amount of risk, and it is important that you understand the risks involved with  
11 liposuction" which were described on the informed consent form as including, among other  
12 things, "to have a bleeding episode during or after surgery, infection, skin scarring, diminishment  
13 or loss of skin sensation, skin discoloration and swelling, skin contour irregularities, seroma,  
14 "fluid overload or systemic reaction" associated with the tumescent liposuction surgery,  
15 pulmonary complications described as being a "possibly fatal complication," "burns and tissue  
16 damage" from the ultrasonic energy and cannulas, "cannula fragmentation," and other "unknown  
17 risks" associated with the liposuction surgery.

18 38. Patient N.C. was sent to a room where she changed into a gown, was weighed, and  
19 her vital signs were obtained and recorded. Shortly thereafter, Physician Assistant R.D. came in  
20 and "marked [her] problem areas" around patient N.C.'s abdomen and then told her he would  
21 only feel comfortable doing the procedure if patient N.C. chose the upper and lower part of her  
22 abdomen for "the best look" which she agreed to do based on Physician Assistant R.D.'s  
23 recommendation. Physician Assistant R.D. told patient N.C. that she would not feel anything  
24 during the procedure. According to patient N.C., the entire encounter with Physician Assistant  
25 R.D. lasted approximately two minutes with no focused physical examination nor any work-up in  
26 regard to, among other things, patient N.C.'s tachycardia condition. Patient N.C. was then  
27 escorted to the room where the liposuction was to be performed.

28 ////



1           39. Once in the liposuction procedure room, patient N.C. was told to lie down and  
2 recalled hearing country music playing loudly in the background. According to patient N.C., she  
3 was given two pills "to keep her heart calm."<sup>17</sup> Insertion points were identified for the insertion  
4 of the cannulas that would be used to extract the fat from the left and right quadrants of patient  
5 N.C.'s upper and lower abdomen areas. According to Physician Assistant R.D.'s procedure note,  
6 patient N.C. was infiltrated with 3200 cc's of tumescent anesthetic solution prior to performing  
7 the liposuction to remove the fat in the different quadrants of the upper and lower abdomen areas.  
8 The amount of tumescent anesthetic solution exceeded the scope of the Delegation of Services  
9 Agreement (DSA) between respondent and Physician Assistant R.D.<sup>18</sup> Physician Assistant R.D.  
10 removed 800 cc's of fat from the upper abdomen area and 800 cc's from the lower abdomen area.  
11 According to patient N.C., the procedure "was so damn painful that I kept saying over and over to  
12 [Physician Assistant R.D.] that it burned beyond all belief all around [her] mid-stomach area  
13 around the belly button area" at which time more of the tumescent solution was provided with  
14 Physician Assistant R.D. indicating "I'm administering more than I'm supposed to you shouldn't  
15 be feeling this." According to patient N.C., the liposuction procedure continued and she "kept  
16 reiterating how much it stung and felt like a fire under [her] skin." During the procedure, there  
17 was no monitoring of patient N.C.'s physiological condition such as frequent checking of her vital  
18 signs, pulse oximetry and/ or telemetry. After some time had passed, Physician Assistant R.D.  
19 told patient N.C. "okay we're done, we got two liters out of you, the most I've seen in a long  
20 time..." Patient N.C. was sent home without being given, in advance, any instructions or a list of  
21 any supplies that she might need postoperatively.<sup>19</sup>

22  
23 <sup>17</sup> Prior to the procedure, patient N.C. advised Physician Assistant R.D. she had a history  
of heart problems which she identified as tachycardia.

24 <sup>18</sup> The DSA provided that volume range for the "Anesthetic Lidocaine with epinephrine" for  
the lower abdomen was 200-700 cc's and the upper abdomen was 200-700 cc's. Patient N.C. was  
25 infiltrated with a total of 3200 cc's during the course of the liposuction on her upper and lower  
abdomen areas.

26 <sup>19</sup> According to patient N.C., prior to the date of her surgery, she was never given a list of  
27 instructions as to what supplies she should have purchased in advance and, thus, she was not prepared  
ahead of time to have those items available to her when she returned home. The certified medical  
28 records for patient N.C. do contain a document entitled "Post-Operative Instructions."



1           40.     Later in the evening on or about October 13, 2011, and into the next morning,  
2 patient N.C. began experiencing "a lot of pain." In the morning, she changed her dressings which  
3 were maxi-pads that had been applied by Physician Assistant R.D. following her liposuction  
4 surgery. Over the next few days, patient N.C. contacted Physician Assistant R.D. to report that  
5 her heart would not stop racing. Respondent told her it was because of the adrenaline and she was  
6 just "too sensitive." Patient N.C. made additional calls to the clinic to complain that "something  
7 didn't feel right." Physician Assistant R.D. returned patient N.C.'s call and told her that she  
8 should text him photos of her abdomen front and side. She did as instructed and Physician  
9 Assistant R.D. texted back that "Everything looks fine." The certified medical records fail to  
10 indicate that Physician Assistant R.D. consulted with respondent, his supervising physician, about  
11 these complications at this time. According to patient N.C., her abdomen "is extremely sore" and  
12 she has two lumps in the same area where she was experiencing pain during the liposuction  
13 procedure.

14           **PATIENT K.D.**

15           41.     On or about March 1, 2012, patient K.D., a then-46 year old female, went to Pacific  
16 Liposculpture for liposuction. She identified her areas of concern as her upper and lower  
17 abdomen, love handles, back bra area and hips. Patient K.D. was provided with an informed  
18 consent form that she signed which indicated "I hereby authorize Dr. Jerrell Borup, MD,  
19 [Physician Assistant R.D.], PA, and such assistants as may be selected to perform the procedure  
20 or treatment."<sup>20</sup> Patient K.D. was not aware that Physician Assistant R.D. was a physician  
21 assistant as opposed to a medical doctor. According to Physician Assistant R.D.'s Liposuction  
22 Procedure Note, patient K.D. was given 50 milligrams (mg) of Atenolol<sup>21</sup> and infiltrated with  
23 2800 cc's of tumescent anesthetic solution in preparation for the liposuction surgery targeting her  
24

25           <sup>20</sup> The certified records provided by respondent were missing page 2 of the informed  
26 consent form for patient K.D.

27           <sup>21</sup> Atenolol (Tenormin®) is used alone or in combination with other medications to manage  
28 hypertension (high blood pressure). It can also be used to prevent angina (chest pain) and improve  
survival after a heart attack. Atenolol is in a class of medications called beta blockers. It works by  
relaxing blood vessels and slowing heart rate to improve blood flow and decrease blood pressure.



1 back bra and inner thigh areas. As part of the liposuction procedure, Physician Assistant R.D.  
2 removed 200 cc's of fat from the left back bra area, 200 cc's from the right back bra area; 200  
3 cc's from the left inner thigh, and 200 cc's from the right inner thigh. The procedure note  
4 indicates patient K.D. was given 500 mg of Keflex to be used for three days and subsequently  
5 requested pain medication with Physician Assistant R.D. calling in a prescription of Vicodin®  
6 5/500 to a nearby pharmacy.<sup>22</sup>

7 42. On or about March 2, 2012, patient K.D. returned to Pacific Liposculpture for  
8 liposuction on her remaining areas of concern which were the upper and lower abdomen and flank  
9 (love handle) areas. According to the procedure note for this visit, patient K.D. "requested  
10 stronger pain med[ication] prior to procedure" and Physician Assistant R.D. asked her to take two  
11 tabs of the previously prescribed Vicodin® plus Ibuprofen to see if that would help her. Patient  
12 K.D. was infiltrated with 3700 cc's of tumescent anesthetic solution in preparation of the  
13 liposuction procedure targeting her upper and lower abdomen and her love handle areas. As part  
14 of the liposuction procedure, Physician Assistant R.D. removed 650 cc's of fat from the left  
15 abdominal area; 650 cc's from the right abdominal area; 300 cc's from the left love handle area;  
16 and 300 cc's from the right love handle area.

17 43. On or about March 5, 2012, patient K.D. called Physician Assistant R.D. stating she  
18 needed "Norco ... or something stronger" to alleviate the pain she was experiencing in her legs,  
19 midsection, abdomen and love handle area. Physician Assistant R.D. noted in a "follow-up note"  
20 that patient K.D. had a history of pain management issues, that he did not believe that increasing  
21 her pain medications would help and instead she should follow up with a pain management  
22 specialist or go to the emergency room. Physician Assistant R.D. did, however, call in a  
23 prescription of hydrocodone (Norco®) 5/325 mg for patient K.D.<sup>23</sup> Physician Assistant R.D. also

24 <sup>22</sup> APAP/Hydrocodone Bitartrate (Lorcet®, Lortab®, Vicodin®, Vicoprofen®, Tussionex®  
25 and Norco®) is a hydrocodone combination of hydrocodone bitartrate and acetaminophen which is a  
26 Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (c),  
27 and a dangerous drug pursuant to Business and Professions Code section 4022. When properly  
28 prescribed and indicated, it is used for the treatment of moderate to severe pain. The procedure note  
does not list the quantity of Vicodin® prescribed by respondent to patient K.D.

<sup>23</sup> There is no indication in the follow-up note of the quantity of this Norco prescription nor  
(continued...)



recommended that patient K.D. continue with icing and continue to wear her spanx-type garment. The certified medical records fail to indicate that Physician Assistant R.D. consulted with respondent, his supervising physician, about these complications at this time.

44. On or about April 19, 2012, patient K.D. called Physician Assistant R.D. and indicated she had a hernia and was still experiencing pain. Physician Assistant R.D. requested that patient K.D. send him photographs via text message (text) so he could compare the current photographs with the photographs taken on the day of her liposuction procedure to see if her shape had improved. Physician Assistant R.D. and patient K.D. exchanged e-mails and/or texts. In one communication at 8:16 p.m., patient K.D. wrote:

"I agree I look better but my stomach is still bloated and not what I expected. I never knew I would still be in excruciating pain almost 2 months later with a hernia from a puncture in my muscles, losing another months work to recuperate from the hernia surgery. I am very disappointed in the surgery performed at your office. I should never have to have [sic] surgery to repair a hernia I got as a result of a puncture in my muscle."

Patient K.D. sent another communication at 8:19 p.m., which stated, "Pain, suffering and additional cost to repair damage done to me in addition to the \$5900.00 I paid to you is just not an acceptable outcome to something I was assured was simple surgery."<sup>24</sup> The certified medical records fail to indicate that Physician Assistant R.D. consulted with respondent, his supervising physician, about these complications at this time.

**PATIENT S.M.**

45. On or about February 22, 2013, patient S.M., a then-42 year old female, had her first visit and consultation at Pacific Liposculpture where she was seen by Physician Assistant R.D. Patient S.M. decided to seek a consultation at Pacific Liposculpture because she was looking to have some liposuction done on her inner thighs and was impressed with the professional

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(...continued)  
any instructions given to patient K.D. regarding the schedule for taking the Norco.

<sup>24</sup> There were a few more communications between patient K.D. and Physician Assistant R.D. on the evening of April 19, 2012. Physician Assistant R.D. ultimately ended the communications after noting "[t]his conversation is not going well so I prefer to let our attorneys handle this moving forward. Sometimes lawyers are necessary and this appears to be one of those cases."



1 appearance of the Pacific Liposculpture medical office. During this visit, patient S.M. filled out  
2 financial forms and a personal medical history form prior to meeting with Physician Assistant  
3 R.D. who examined her inner thighs and explained the liposuction procedure that would be  
4 performed. No focused physical examination of patient S.M. was performed by Physician  
5 Assistant R.D. at this visit, nor was patient S.M. provided with any informed consent documents  
6 to review.

7 46. In approximately mid-March 2013, patient S.M. called Pacific Liposculpture and  
8 spoke with "Stephanie" and advised her that she wanted to proceed with the liposuction on her  
9 inner thighs and an appointment was made for the procedure.

10 47. On or about April 17, 2013, patient S.M. arrived for her scheduled liposuction  
11 surgery to be performed on her inner thighs. After paying the \$1,500 fee for her procedure,  
12 patient S.M. was given an informed consent form which she had little time to review before her  
13 procedure was scheduled to begin. The "Risks of Liposuction Surgery" section of the Informed  
14 Consent Liposuction form noted that "every surgical procedure involves a certain amount of risk,  
15 and it is important that you understand the risks involved with liposuction" which were described  
16 on the informed consent form as including, among other things, "to have a bleeding episode  
17 during or after surgery, infection, skin scarring, diminishment or loss of skin sensation, skin  
18 discoloration and swelling, skin contour irregularities, seroma, "the possibility of complications,  
19 injury, and even death from all forms of surgical anesthesia" including "local anesthesia," "fluid  
20 overload or systemic reaction" associated with the tumescent liposuction surgery, "malposition,  
21 scarring, unacceptable appearance or loss of the umbilicus (navel) may appear," and pulmonary  
22 complications described as being a "possibly fatal complication."<sup>25</sup>

23 ////

24 \_\_\_\_\_  
25 <sup>25</sup> Specifically, the "pulmonary complications" section of the informed consent form  
26 stated, "Pulmonary complications – Fat embolism syndrome occurs when fat droplets are trapped  
27 in the lungs. This is a very rare and possibly fatal complication of suction assisted lipectomy.  
28 Pulmonary complications may occur secondary to both blood clots (pulmonary emboli) or fat  
deposits (fat emboli). Should either of these complications occur, you may require hospitalization  
and additional treatment. Pulmonary emboli can be life threatening or fatal in some  
circumstances."



1        48.     No detailed and/or focused physical examination was conducted on patient S.M. by  
2 Physician Assistant R.D. on or about April 17, 2013. Patient S.M. was prepped for the procedure  
3 and given 200 mg of Atenolol. Patient S.M. was then infiltrated with 1650 cc's of tumescent  
4 anesthetic solution in preparation of the liposuction procedure which targeted her inner thigh  
5 areas. As part of the liposuction procedure, Physician Assistant R.D. removed 275 cc's of fat  
6 from the left inner thigh area and 275 cc's from the right inner thigh area. After the liposuction  
7 procedure, gauze was wrapped around patient S.M.'s inner thigh area and shortly thereafter she  
8 drove herself home.

9        49.     On or about May 22, 2013, patient S.M. called Pacific Liposculpture to express her  
10 concern about a "pocket of swelling on [her] right thigh" which she wanted to have examined  
11 before her next scheduled follow-up appointment of May 29, 2013. A Pacific Liposculpture staff  
12 member advised patient S.M. that an earlier appointment could not be scheduled.

13        50.     On or about May 29, 2013, patient S.M. had her follow-up appointment in which  
14 she again expressed her concern over the swelling in her right inner thigh area. Physician  
15 Assistant R.D. examined the inner thigh areas and noted "residual swelling" minimal on the left  
16 inner thigh and moderate on the right inner thigh. Physician Assistant R.D.'s assessment was  
17 post-operative swelling six weeks post-liposuction. According to Physician Assistant R.D., he  
18 recommended patient S.M. remove her compression garment at night but continue to wear it  
19 during the day when she was "gravity dependent." Physician Assistant R.D. also advised patient  
20 S.M. she could start walking and doing some light weights but recommended that she hold-off on  
21 any running. The certified medical records fail to indicate that Physician Assistant R.D. consulted  
22 with respondent, his supervising physician, about these complications at this time.

23        51.     On or about June 11, 2013, patient S.M. texted Physician Assistant R.D. to express  
24 her concern about the "clump" on her right inner thigh area which she reported was "becoming  
25 really hard and looks so weird." Patient S.M. texted some photos of her right and left thigh areas  
26 which showed a noticeable swollen area on her right inner thigh. Physician Assistant R.D.  
27 believed the increased post-operative swelling was possibly exercise induced. Physician Assistant  
28



1 R.D. recommended that patient S.M. discontinue exercising, that she start on dexamethasone<sup>26</sup>  
2 and/or methylprednisolone (Medrol® dosepak),<sup>27</sup> continue with the RICE (rest, ice, compression  
3 and elevation) protocol, and follow-up in one week. On or about June 14, 2013, patient S.M.  
4 texted Physician Assistant R.D. to advise him she had started taking the methylprednisolone. The  
5 certified medical records fail to indicate that Physician Assistant R.D. consulted with respondent,  
6 his supervising physician, about these complications at this time.

7 52. On or about June 18, 2013, Physician Assistant R.D. texted patient S.M. wondering  
8 if there was “[a]ny progress [concerning her right inner thigh area]?” Patient S.M. responded  
9 “...[n]one, it hasn’t shrunk at all, it’s very hard and a couple days ago I woke up and it was  
10 starting to form a bruise.” She further indicated, among other things, that she had not been  
11 exercising, she was following the RICE protocol, and had been taking the methylprednisolone as  
12 directed. The certified medical records fail to indicate that Physician Assistant R.D. consulted  
13 with respondent, his supervising physician, about these complications at this time.

14 53. On or about June 21, 2013, patient S.M. texted Physician Assistant R.D. to express,  
15 among other things, her concern that “the swelling has not gone down at all,” her right inner thigh  
16 area was now “black and blue” and she asked “is that normal?” The certified medical records fail  
17 to indicate that Physician Assistant R.D. consulted with respondent, his supervising physician,  
18 about these complications at this time.

19 54. Between on or about June 21 and August 23, 2013, Physician Assistant R.D. and  
20 patient S.M. continued to exchange texts about the continuing problem with her right inner thigh  
21 area with patient S.M. wondering “could this lump [on the right inner thigh] be a localized  
22 hematoma (collection of blood from bleeding)” and expressing concern that she had read “[t]hese

23  
24 <sup>26</sup> Dexamethasone is a corticosteroid that prevents the release of substances in the body that  
25 cause inflammation. Dexamethasone is generally used to treat many different inflammatory  
conditions such as allergic disorders, skin conditions, ulcerative colitis, arthritis, lupus, psoriasis, or  
breathing disorders.

26 <sup>27</sup> Methylprednisolone is a steroid that prevents the release of substances in the body that  
27 cause inflammation. Methylprednisolone is generally used to treat many different inflammatory  
28 conditions such as arthritis, lupus, psoriasis, ulcerative colitis, allergic disorders, gland (endocrine)  
disorders, and conditions that affect the skin, eyes, lungs, stomach, nervous system or blood cells.



1 [hematomas] can take up to a year to absorb and, occasionally, need to be surgically removed?”  
2 During this period of time, Physician Assistant R.D. sent occasional follow-up text messages to  
3 check on patient S.M.’s progress, and patient S.M. began making arrangements to obtain a second  
4 opinion from a physician. The certified medical records fail to indicate that Physician Assistant  
5 R.D. consulted with respondent, his supervising physician, about these complications at this time.

6 55. On or about September 11, 2013, patient S.M. was examined by Dr. M.B., a board  
7 certified plastic surgeon, who immediately diagnosed patient S.M. as having a pseudobursa on her  
8 right inner thigh which would require surgical removal and corrective surgery. Dr. M.B. also  
9 examined patient S.M.’s left thigh and informed her it appeared her left thigh had been over  
10 suctioned and she would need a fat transfer to give her left thigh a smooth and even appearance.  
11 During the course of Dr. M.B.’s discussions with patient S.M., Dr. M.B. learned that the  
12 procedure was not performed by a licensed physician and surgeon but, instead, by a physician’s  
13 assistant, which caused Dr. M.B. great concern. Dr. M.B. searched the web and found  
14 information over the internet in which Physician Assistant R.D. was advertising himself as the  
15 “Director of Surgery” at Pacific Liposculpture which Dr. M.B. found very troubling. Dr. M.B.  
16 ultimately called Physician Assistant R.D.’s alleged supervising physician, respondent, to report  
17 his diagnosis of a pseudobursa on patient S.M.’s right inner thigh and to express his concerns  
18 over, among other things, Physician Assistant R.D. performing liposuction procedures and  
19 advertising himself as the “Director of Surgery” for Pacific Liposculpture. According to Dr.  
20 M.B., Physician Assistant R.D.’s supervising physician, respondent, told Dr. M.B. that it would  
21 not happen again.

## 22 **SECOND CAUSE FOR DISCIPLINE**

### 23 **(Gross Negligence)**

24 56. Respondent is further subject to disciplinary action under sections 2227 and 2234, as  
25 defined by section 2234, subdivision (b), 3501 and 3502, of the Code, and California Code of  
26 Regulations, title 16, sections 1399.540, 1399.541, and 1399.545, in that he committed gross  
27 negligence, as the supervising physician, by failing to properly supervise Physician Assistant  
28 R.D., in his care and treatment of patients L.W., N.C., K.D., and S.M., as more particularly



1 alleged hereinafter:

2 **PATIENT L.W.**

3 57. Respondent committed gross negligence as the supervising physician, by failing to  
4 properly supervise Physician Assistant R.D., in his care and treatment of L.W., which included,  
5 but was not limited to, the following:

6 (a) Paragraphs 18 through 35, above, are hereby incorporated by reference  
7 and realleged as if fully set forth herein;

8 (b) Respondent aided and abetted Physician Assistant R.D. to engage in the  
9 unlicensed practice of medicine by performing liposuction surgery on patient L.W.;

10 (c) Physician Assistant R.D.'s informed consent for patient L.W. was  
11 improper and inadequate because, among other things, the informed consent was  
12 not detailed or thorough, patient L.W. was informed the liposuction procedure  
13 would be overseen by an onsite medical doctor when, in truth and fact, it was not,  
14 and the written informed consent form stated the liposuction surgery would be  
15 performed by respondent and Physician Assistant R.D. when, in truth and fact, the  
16 surgery was performed solely by Physician Assistant R.D.;

17 (d) Physician Assistant R.D.'s pre-operative and perioperative care and  
18 treatment for patient L.W. was inadequate and/or represented a disregard for  
19 patient safety because, among other things, Physician Assistant R.D. failed to  
20 obtain a detailed history and failed to perform a proper and focused preoperative  
21 physical examination on patient L.W.; Physician Assistant R.D. premedicated  
22 patient L.W. with Atenolol which blocks the physiological response to tachycardia;  
23 there was no physiological monitoring of patient L.W. during his liposuction  
24 procedure such as frequent checking of vital signs, pulse oximetry and/or  
25 telemetry; the emergency crash cart in the procedure room was not fully stocked;  
26 the procedures for instrument sterilization were inadequate; and the liposuction  
27 surgery was not performed in an accredited surgery center;  
28



1 (e) Physician Assistant R.D. failed to properly perform the liposuction of  
2 the abdomen on patient L.W. in a manner that achieved optimal results;

3 (f) Physician Assistant R.D. failed to provide proper post-operative care  
4 by, among other things, failing to provide patient L.W. with an appropriate  
5 compression garment, and failing to respond appropriately to patient L.W.'s post-  
6 operative concerns; and

7 (g) Respondent failed to adequately and appropriately supervise Physician  
8 Assistant R.D.'s practice of medicine with patient L.W. because, among other  
9 things, respondent lacked the necessary training, experience and/or qualifications  
10 to delegate liposuction surgery to Physician Assistant R.D. who similiarly lacked  
11 the necessary training, experience and/or qualifications to perform such surgery.  
12 Moreover, the manner and degree of respondent's alleged supervision was  
13 inadequate, placed patient L.W. at risk, and enabled Physician Assistant R.D. to  
14 operate autonomously in the practice of medicine which included, but was not  
15 limited to, performing liposuction surgery on patient L.W.

16 **PATIENT N.C.**

17 58. Respondent committed gross negligence as the supervising physician, by failing to  
18 properly supervise Physician Assistant R.D., in his care and treatment of patient N.C., which  
19 included, but was not limited to, the following:

20 (a) Paragraphs 18 through 26 and 36 through 40, above, are hereby  
21 incorporated by reference and realleged as if fully set forth herein;

22 (b) Respondent aided and abetted Physician Assistant R.D. to engage in the  
23 unlicensed practice of medicine by performing liposuction surgery on patient N.C.;

24 (c) Physician Assistant R.D.'s informed consent with patient N.C. was  
25 improper and inadequate because, among other things, the informed consent was  
26 not detailed or thorough, patient N.C. was informed the liposuction procedure  
27 would be overseen by a medical doctor when, in truth and fact, it was not, and the  
28 written informed consent form stated the liposuction surgery would be performed



1 by respondent and Physician Assistant R.D. when, in truth and fact, the surgery  
2 was performed by Physician Assistant R.D.;

3 (d) Physician Assistant R.D.'s pre-operative and perioperative care and  
4 treatment for patient N.C. was inadequate and/or represented a disregard for patient  
5 safety because, among other things, Physician Assistant R.D. failed to obtain a  
6 detailed history from patient N.C. and failed to perform a proper preoperative  
7 physical examination of patient N.C.; Physician Assistant R.D. failed to perform a  
8 proper work-up regarding patient N.C.'s reported tachycardia; Physician Assistant  
9 R.D. premedicated patient N.C. with Atenolol which blocks the physiological  
10 response to tachycardia; there was no physiological monitoring of patient N.C.  
11 during her liposuction procedure such as frequent checking of vital signs, pulse  
12 oximetry and/ or telemetry; respondent failed to terminate the liposuction  
13 procedure despite patient N.C.'s repeated complaints of extreme pain; the  
14 emergency crash cart in the procedure room was not fully stocked; the procedures  
15 for instrument sterilization were inadequate; and the liposuction surgery was not  
16 performed in an accredited surgery center;

17 (e) Physician Assistant R.D. failed to perform the proper procedure on  
18 patient N.C. which should have been an abdominoplasty with flank liposuction,  
19 and failed to properly perform the liposuction of the abdomen on patient N.C. in a  
20 manner that achieved optimal results;

21 (h) Physician Assistant R.D. failed to provide proper post-operative care  
22 by, among other things, failing to provide patient N.C. with adequate post-  
23 operative instructions, failing to provide patient N.C. with an appropriate  
24 compression garment, and failed to respond appropriately to patient N.C.'s post-  
25 operative concerns of tachycardia; and

26 (i) Respondent failed to adequately and appropriately supervise Physician  
27 Assistant R.D.'s practice of medicine with patient N.C. because, among other  
28 things, respondent lacked the necessary training, experience and/or qualifications



1 to delegate liposuction surgery to Physician Assistant R.D. who similiarly lacked  
2 the necessary training, experience and/or qualifications to perform such surgery.  
3 Moreover, the manner and degree of respondent's alleged supervision was  
4 inadequate, placed patient N.C. at risk, and enabled Physician Assistant R.D. to  
5 operate autonomously in the practice of medicine which included, but was not  
6 limited to, performing liposuction surgery on patient N.C.

7 **PATIENT K.D.**

8 59. Respondent committed gross negligence as the supervising physician, by failing to  
9 properly supervise Physician Assistant R.D., in his care and treatment of patient K.D., which  
10 included, but was not limited to, the following:

11 (a) Paragraphs 18 through 26 and 41 through 44, above, are hereby  
12 incorporated by reference and realleged as if fully set forth herein;

13 (b) Respondent, by failing to properly supervise Physician Assistant R.D.,  
14 aided and abetted Physician Assistant R.D. in engaging in the unlicensed practice  
15 of medicine by performing liposuction surgery on patient K.D.;

16 (c) Physician Assistant R.D.'s informed consent with patient K.D. was  
17 improper and inadequate because, among other things, the informed consent was  
18 not detailed or thorough, patient K.D. was not clearly informed respondent was a  
19 physician assistant, and the written informed consent form stated the liposuction  
20 surgery would be performed by respondent and Physician Assistant R.D. when, in  
21 truth and fact, the surgery was performed solely by Physician Assistant R.D.;

22 (d) Physician Assistant R.D.'s pre-operative and perioperative care and  
23 treatment for patient K.D. was inadequate and/or represented a disregard for  
24 patient safety because, among other things, Physician Assistant R.D. failed to  
25 obtain a detailed history and failed to perform a proper and focused preoperative  
26 physical examination on patient K.D.; Physician Assistant R.D. premedicated  
27 patient K.D. with Atenolol which blocks the physiological response to tachycardia;  
28 there was no physiological monitoring of patient K.D. during his liposuction



1 procedure such as frequent checking of vital signs, pulse oximetry and/ or  
2 telemetry; the emergency crash cart in the procedure room was not fully stocked;  
3 the procedures for instrument sterilization were inadequate; and the liposuction  
4 surgery was not performed in an accredited surgery center;

5 (e) Physician Assistant R.D.'s communications with patient K.D. through  
6 text messages and/or e-mails were not HIPAA compliant; and

7 (f) Respondent failed to adequately and appropriately supervise Physician  
8 Assistant R.D.'s practice of medicine with patient K.D. because, among other  
9 things, respondent lacked the necessary training, experience and/or qualifications  
10 to delegate liposuction surgery to Physician Assistant R.D. who similiarly lacked  
11 the necessary training, experience and/or qualifications to perform such surgery.  
12 Moreover, the manner and degree of respondent's alleged supervision was  
13 inadequate, placed patient K.D. at risk, and enabled Physician Assistant R.D. to  
14 operate autonomously in the practice of medicine which included, but was not  
15 limited to, performing liposuction surgery on patient K.D.

16 **PATIENT S.M.**

17 60. Respondent committed gross negligence as the supervising physician, by failing to  
18 properly supervise Physician Assistant R.D., in his care and treatment of patient S.M., which  
19 included, but was not limited to, the following:

20 (a) Paragraphs 18 through 26 and 45 through 55, above, are hereby  
21 incorporated by reference and realleged as if fully set forth herein;

22 (b) Respondent aided and abetted Physician Assistant R.D. to engage in the  
23 unlicensed practice of medicine by performing liposuction surgery on patient S.M.;

24 (c) Physician Assistant R.D.'s informed consent with patient S.M. was  
25 improper and inadequate because, among other things, the informed consent was  
26 not detailed or thorough and patient S.M. was led to believe the liposuction  
27 procedure would be overseen by an onsite medical doctor, when, in truth and fact,  
28 it was not, and the written informed consent form did not clearly indicate the



1 liposuction surgery would be performed solely by Physician Assistant R.D.;

2 (d) The pre-operative and perioperative care and treatment for patient S.M.  
3 was inadequate and/or represented a disregard for patient safety because, among  
4 other things, Physician Assistant R.D. failed to obtain a detailed history from, and  
5 failed to perform a proper and focused preoperative physical examination of,  
6 patient S.M.; Physician Assistant R.D. premedicated patient S.M. with Atenolol  
7 which blocks the physiological response to tachycardia; there was no physiological  
8 monitoring of patient S.M. during her liposuction procedure such as frequent  
9 checking of vital signs, pulse oximetry and/ or telemetry; the emergency crash cart  
10 in the procedure room was not fully stocked; the procedures for instrument  
11 sterilization were inadequate; and the liposuction surgery was not performed in an  
12 accredited surgery center;

13 (e) Physician Assistant R.D. failed to properly perform the liposuction on  
14 patient S.M.'s inner thighs in a manner that achieved optimal results;

15 (f) Physician Assistant R.D. failed to provide proper post-operative care to  
16 patient S.M. by failing to properly manage, respond and/or treat the complication  
17 to her right inner thigh which developed a pseudobursa; and

18 (g) Physician Assistant R.D.'s communications with patient S.M. through  
19 text messages and/or e-mails were not HIPAA compliant; and

20 (h) Respondent failed to adequately and appropriately supervise Physician  
21 Assistant R.D.'s practice of medicine with patient S.M. because, among other  
22 things, respondent lacked the necessary training, experience and/or qualifications  
23 to delegate liposuction surgery to Physician Assistant R.D. who similarly lacked  
24 the necessary training, experience and/or qualifications to perform such surgery.  
25 Moreover, the manner and degree of respondent's alleged supervision was  
26 inadequate, placed patient S.M. at risk, and enabled Physician Assistant R.D. to  
27 operate autonomously in the practice of medicine which included, but was not  
28 limited to, performing liposuction surgery on patient S.M.



1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Repeated Negligent Acts)**

3 61. Respondent is further subject to disciplinary action under sections 2227 and 2234, as  
4 defined by section 2234, subdivision (c), 3501 and 3502, of the Code, and California Code of  
5 Regulations, title 16, sections 1399.540, 1399.541, and 1399.545, in that he committed repeated  
6 negligent acts as the supervising physician, by failing to properly supervise Physician Assistant  
7 R.D., in his care and treatment of patients L.W., N.C., K.D., and S.M., as more particularly  
8 alleged hereinafter:

9 **PATIENT L.W.**

10 62. Respondent committed repeated negligent acts as the supervising physician, by failing  
11 to properly supervise Physician Assistant R.D., in his care and treatment of patient L.W., which  
12 included, but was not limited to, the following:

13 (a) Paragraphs 18 through 35, and 57, above, are hereby incorporated by  
14 reference and realleged as if fully set forth herein;

15 (b) Respondent aided and abetted Physician Assistant R.D. to engage in the  
16 unlicensed practice of medicine by performing liposuction surgery on patient L.W.;

17 (c) Physician Assistant R.D.'s informed consent for patient L.W. was  
18 improper and inadequate because, among other things, the informed consent was  
19 not detailed or thorough, patient L.W. was informed the liposuction procedure  
20 would be overseen by an onsite medical doctor when, in truth and fact, it was not,  
21 and the written informed consent form stated the liposuction surgery would be  
22 performed by respondent and Physician Assistant R.D. when, in truth and fact, the  
23 surgery was performed solely by Physician Assistant R.D.;

24 (d) Physician Assistant R.D.'s pre-operative and perioperative care and  
25 treatment for patient L.W. was inadequate and/or represented a disregard for  
26 patient safety because, among other things, Physician Assistant R.D. failed to  
27 obtain a detailed history and failed to perform a proper and focused preoperative  
28 physical examination on patient L.W.; Physician Assistant R.D. premedicated



1 patient L.W. with Atenolol which blocks the physiological response to tachycardia;  
2 there was no physiological monitoring of patient L.W. during his liposuction  
3 procedure such as frequent checking of vital signs, pulse oximetry and/ or  
4 telemetry; the emergency crash cart in the procedure room was not fully stocked;  
5 the procedures for instrument sterilization were inadequate; and the liposuction  
6 surgery was not performed in an accredited surgery center;

7 (e) Physician Assistant R.D. failed to properly perform the liposuction of  
8 the abdomen on patient L.W. in a manner that achieved optimal results;

9 (f) Physician Assistant R.D. failed to provide proper post-operative care  
10 by, among other things, failing to provide patient L.W. with an appropriate  
11 compression garment, and failing to respond appropriately to patient L.W.'s post-  
12 operative concerns;

13 (g) Respondent failed to adequately and appropriately supervise Physician  
14 Assistant R.D.'s practice of medicine with patient L.W. because, among other  
15 things, respondent lacked the necessary training, experience and/or qualifications  
16 to delegate liposuction surgery to Physician Assistant R.D. who similarly lacked  
17 the necessary training, experience and/or qualifications to perform such surgery.  
18 Moreover, the manner and degree of respondent's alleged supervision was  
19 inadequate, placed patient L.W. at risk, and enabled Physician Assistant R.D. to  
20 operate autonomously in the practice of medicine which included, but was not  
21 limited to, performing liposuction surgery on patient L.W.; and

22 (h) Physician Assistant R.D.'s standardized operative report for patient  
23 L.W. was inadequate and failed to convey meaningful information.

24 **PATIENT N.C.**

25 63. Respondent committed repeated negligent acts as the supervising physician, by failing  
26 to properly supervise Physician Assistant R.D., in his care and treatment of patient N.C., which  
27 included, but was not limited to, the following:

28 ////



1 (a) Paragraphs 18 through 26 and 36 through 40, and 58, above, are hereby  
2 incorporated by reference and realleged as if fully set forth herein;

3 (b) Respondent aided and abetted Physician Assistant R.D. to engage in the  
4 unlicensed practice of medicine by performing liposuction surgery on patient N.C.;

5 (c) Physician Assistant R.D.'s informed consent with patient N.C. was  
6 improper and inadequate because, among other things, the informed consent was  
7 not detailed or thorough and patient N.C. was informed the liposuction procedure  
8 would be overseen by a medical doctor when, in truth and fact, it was not, and the  
9 written informed consent form stated the liposuction surgery would be performed  
10 by respondent and Physician Assistant R.D. when, in truth and fact, the surgery  
11 was performed by Physician Assistant R.D.;

12 (d) Physician Assistant R.D.'s pre-operative and perioperative care and  
13 treatment for patient N.C. was inadequate and/or represented a disregard for patient  
14 safety because, among other things, Physician Assistant R.D. failed to obtain a  
15 detailed history and failed to perform a proper preoperative physical examination  
16 on patient N.C.; Physician Assistant R.D. failed to perform a proper work-up  
17 regarding patient N.C.'s reported tachycardia; Physician Assistant R.D.  
18 premedicated patient N.C. with Atenolol which blocks the physiological response  
19 to tachycardia; there was no physiological monitoring of patient N.C. during her  
20 liposuction procedure such as frequent checking of vital signs, pulse oximetry and/  
21 or telemetry; Physician Assistant R.D. failed to terminate the liposuction procedure  
22 despite patient N.C.'s repeated complaints of extreme pain; the emergency crash  
23 cart in the procedure room was not fully stocked; the procedures for instrument  
24 sterilization were inadequate; and the liposuction surgery was not performed in an  
25 accredited surgery center;

26 (e) Physician Assistant R.D. failed to perform the proper procedure on  
27 patient N.C. which should have been an abdominoplasty with flank liposuction,  
28 and failed to properly perform the liposuction of the abdomen on patient N.C. in a



1 manner that achieved optimal results;

2 (f) Physician Assistant R.D. failed to provide proper post-operative care  
3 by, among other things, failing to provide patient N.C. with adequate post-  
4 operative instructions, failing to provide patient N.C. with an appropriate  
5 compression garment, and failed to respond appropriately to patient N.C.'s post-  
6 operative concerns of tachycardia;

7 (g) Respondent failed to adequately and appropriately supervise Physician  
8 Assistant R.D.'s practice of medicine with patient N.C. because, among other  
9 things, respondent lacked the necessary training, experience and/or qualifications  
10 to delegate liposuction surgery to Physician Assistant R.D. who similiarly lacked  
11 the necessary training, experience and/or qualifications to perform such surgery.  
12 Moreover, the manner and degree of respondent's alleged supervision was  
13 inadequate, placed patient N.C. at risk, and enabled Physician Assistant R.D. to  
14 operate autonomously in the practice of medicine which included, but was not  
15 limited to, performing liposuction surgery on patient N.C.; and

16 (h) Physician Assistant R.D.'s standardized operative report for patient  
17 N.C. was inadequate and failed to convey meaningful information.

18 **PATIENT K.D.**

19 64. Respondent committed repeated negligent acts as the supervising physician, by failing  
20 to properly supervise Physician Assistant R.D., in his care and treatment of patient K.D., which  
21 included, but was not limited to, the following:

22 (a) Paragraphs 18 through 26, 41 through 44, and 59, above, are hereby  
23 incorporated by reference and realleged as if fully set forth herein;

24 (b) Respondent aided and abetted Physician Assistant R.D. to engage in the  
25 unlicensed practice of medicine by performing liposuction surgery on patient K.D.;

26 (c) Physician Assistant R.D.'s informed consent with patient K.D. was  
27 improper and inadequate because, among other things, the informed consent was  
28 not detailed or thorough, patient K.D. was not clearly informed Physician Assistant



1 R.D. was a physician assistant, and the written informed consent form stated the  
2 liposuction surgery would be performed by respondent and Physician Assistant  
3 R.D. when, in truth and fact, the surgery was performed solely by Physician  
4 Assistant R.D.;

5 (d) Physician Assistant R.D.'s pre-operative and perioperative care and  
6 treatment for patient K.D. was inadequate and/or represented a disregard for  
7 patient safety because, among other things, Physician Assistant R.D. failed to  
8 obtain a detailed history and failed to perform a proper and focused preoperative  
9 physical examination on patient K.D.; Physician Assistant R.D. premedicated  
10 patient K.D. with Atenolol which blocks the physiological response to tachycardia;  
11 there was no physiological monitoring of patient K.D. during his liposuction  
12 procedure such as frequent checking of vital signs, pulse oximetry and/ or  
13 telemetry; the emergency crash cart in the procedure room was not fully stocked;  
14 the procedures for instrument sterilization were inadequate; and the liposuction  
15 surgery was not performed in an accredited surgery center;

16 (e) Physician Assistant R.D.'s communications with patient K.D. through  
17 text messages and/or e-mails were not HIPAA compliant;

18 (f) Respondent failed to adequately and appropriately supervise Physician  
19 Assistant R.D.'s practice of medicine with patient K.D. because, among other  
20 things, respondent lacked the necessary training, experience and/or qualifications  
21 to delegate liposuction surgery to Physician Assistant R.D. who similarly lacked  
22 the necessary training, experience and/or qualifications to perform such surgery.  
23 Moreover, the manner and degree of respondent's alleged supervision was  
24 inadequate, placed patient K.D. at risk, and enabled Physician Assistant R.D. to  
25 operate autonomously in the practice of medicine which included, but was not  
26 limited to, performing liposuction surgery on patient K.D.; and

27 (g) Physician Assistant R.D.'s standardized operative report for patient  
28 K.D. was inadequate and failed to convey meaningful information.



1        PATIENT S.M.

2        65. Respondent committed repeated negligent acts as the supervising physician, by failing  
3 to properly supervise Physician Assistant R.D., in his care and treatment of patient S.M., which  
4 included, but was not limited to, the following:

5            (a) Paragraphs 18 through 26, 45 through 55, and 60, above, are hereby  
6 incorporated by reference and realleged as if fully set forth herein;

7            (b) Respondent aided and abetted Physician Assistant R.D. to engage in the  
8 unlicensed practice of medicine by performing liposuction surgery on patient S.M.;

9            (c) Physician Assistant R.D.'s informed consent with patient S.M. was  
10 improper and inadequate because, among other things, the informed consent was  
11 not detailed or thorough and patient S.M. was led to believe the liposuction  
12 procedure would be overseen by an onsite medical doctor, when, in truth and fact,  
13 it was not, and the written informed consent form did not clearly indicate the  
14 liposuction surgery would be performed solely by Physician Assistant R.D.;

15            (d) Physician Assistant R.D.'s pre-operative and perioperative care and  
16 treatment for patient S.M. was inadequate and/or represented a disregard for  
17 patient safety because, among other things, Physician Assistant R.D. failed to  
18 obtain a detailed history from, and failed to perform a proper and focused  
19 preoperative physical examination of patient S.M.; Physician Assistant R.D.  
20 premedicated patient S.M. with Atenolol which blocks the physiological response  
21 to tachycardia; there was no physiological monitoring of patient S.M. during her  
22 liposuction procedure such as frequent checking of vital signs, pulse oximetry and/  
23 or telemetry; the emergency crash cart in the procedure room was not fully stocked;  
24 the procedures for instrument sterilization were inadequate; and the liposuction  
25 surgery was not performed in an accredited surgery center;

26            (e) Physician Assistant R.D. failed to properly perform the liposuction on  
27 patient S.M.'s inner thighs in a manner that achieved optimal results;

28        ////



1 (f) Physician Assistant R.D. failed to provide proper post-operative care to  
2 patient S.M. by failing to properly manage, respond and/or treat the complication  
3 to her right inner thigh which developed a pseudobursa;

4 (g) Physician Assistant R.D.'s communications with patient S.M. through  
5 text messages and/or e-mails were not HIPAA compliant;

6 (h) Respondent failed to adequately and appropriately supervise Physician  
7 Assistant R.D.'s practice of medicine with patient S.M. because, among other  
8 things, respondent lacked the necessary training, experience and/or qualifications  
9 to delegate liposuction surgery to Physician Assistant R.D. who similarly lacked  
10 the necessary training, experience and/or qualifications to perform such surgery.  
11 Moreover, the manner and degree of respondent's alleged supervision was  
12 inadequate, placed patient S.M. at risk, and enabled Physician Assistant R.D. to  
13 operate autonomously in the practice of medicine which included, but was not  
14 limited to, performing liposuction surgery on patient S.M.; and

15 (i) Physician Assistant R.D.'s standardized operative report for patient  
16 S.M. was inadequate and failed to convey meaningful information.

#### 17 **FOURTH CAUSE FOR DISCIPLINE**

##### 18 **(False and/or Misleading Advertising)**

19 66. Respondent is further subject to disciplinary action under sections 2227 and 2234, as  
20 defined by sections 651, 2271 and 17500, of the Code, and California Code of Regulations, title  
21 16, sections 1399.541, in that he has made and disseminated, or caused to be made and  
22 disseminated, false and/or misleading advertising in violation of section 17500 of the Code, as  
23 more particularly alleged in paragraphs 23 through 55, above, which are hereby incorporated by  
24 reference and realleged as if fully set forth herein. The false and/or misleading statements  
25 include, but are not limited to the following:

26 (a) Physician Assistant R.D. being identified as the "Director of Surgery"  
27 or words to that effect which is misleading because it conveys, among other things,  
28 that Physician Assistant R.D. has a higher level of education, training and/or



1 experience than he actually possesses, and/or that he is a licensed physician and  
2 surgeon;

3 (b) Failing to clearly define the term " P.A.," "PA-C" or other words to that  
4 effect whenever used in any advertising which is misleading because many  
5 potential or actual patients would not know the meaning of these terms and would  
6 assume, especially with the title of "Director of Surgery," that Physician Assistant  
7 R.D. has a higher level of education, training and/or experience than he actually  
8 possesses and/or that he is a licensed physician and surgeon;

9 (c) False and/or misleading statements concerning respondent's training  
10 and qualifications in the area of liposuction surgery including, but not limited to,  
11 "that Dr. Borup, along with his highly trained liposuction team, will help to  
12 minimize your risks while offering you the best possible care all under local  
13 anesthesia," that "[b]ecause of Dr. Borup's advanced training and experience in  
14 liposuction technology, Pacific Lipo's procedures significantly reduce pain,  
15 swelling and bruising, while providing you with smoother results, tighter skin,  
16 permanent improvement and no unsightly scars," that "Dr. Borup supervises a  
17 team of highly trained liposuctionists with a combined experience of well over  
18 10,000 lipo procedures," that "[a]s Medical Director of Pacific Liposculpture, Dr.  
19 Borup offers patients a lifetime of experience and knowledge in his state-of-the-art  
20 outpatient surgical setting." The aforementioned statements were false and/or  
21 misleading because, among other things, they misrepresented and inflated  
22 respondent's training, experience and/or qualifications in the area of liposuction  
23 surgery and were designed to give patients the impression that respondent, was, in  
24 fact, a highly-qualified physician in the area of liposuction surgery, would be  
25 performing the liposuction surgery or, at a minimum, would be closely supervising  
26 any liposuction surgery that was performed. In truth and fact, respondent had no  
27 "advanced training and experience in liposuction technology," was not interested  
28 in performing any procedures, never performed a single liposuction procedure



1 while at Pacific Liposculpture, and his supervision, if any, was minimal;

2 (d) Failing to timely correct statements in patient testimonials and/or Yelp  
3 reviews, that could be accessed on or through the Pacific Liposculpture website,  
4 which referred to Physician Assistant R.D. as "Dr. Rod" and/or "doc," or other  
5 words to that effect. These statements were false and/or misleading because they  
6 inferred that Physician Assistant R.D. had a higher level of education and/or  
7 training than he actually possesses and/or that he is a licensed physician and  
8 surgeon instead of a physician's assistant;

9 (e) Photographs of Physician Assistant R.D. in surgical scrubs and/or  
10 photographs or video of Physician Assistant R.D. performing liposuction surgery,  
11 which combined with the other false and/or misleading advertising referenced  
12 herein, led patients to believe that Physician Assistant R.D. possessed the  
13 education, training and/or qualifications to legally perform the liposuction  
14 procedures; and

15 (f) The posting of patient testimonials which were not a true and accurate  
16 description of liposuction surgery and any risks associated therewith which state,  
17 among other things, that liposuction is "no pain, all gain," that liposuction "feels  
18 like a day at the spa...like getting a massage," that there is "no pain, no  
19 discomfort" or other words to that effect which falsely convey the procedure is  
20 pain free and without risk of any surgical or other complications.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Dishonesty and/or Corruption)**

23 67. Respondent is further subject to disciplinary action under sections 2227 and 2234, as  
24 defined by section 2234, subdivision (c), of the Code, and California Code of Regulations, title  
25 16, sections 1399.541, in that he committed an act or acts of dishonesty and/or corruption in  
26 regard to his false and deceptive advertising, as more particularly alleged in paragraphs 23  
27 through 55, and 66, above, which are hereby incorporated by reference and realleged as if fully  
28 set forth herein.



1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Adequate and Accurate Medical Record)**

3 68. Respondent is further subject to disciplinary action under sections 2227 and 2234, as  
4 defined by section 2266, of the Code, and California Code of Regulations, title 16, section  
5 1399.541, in that respondent failed to maintain adequate and accurate records as the supervising  
6 physician, by failing to properly supervise Physician Assistant R.D., in his care and treatment of  
7 patients L.W., N.C., K.D., and S.M., as more fully particularly alleged herein:

8 (a) Paragraphs 27 through 65, above, are hereby incorporated by reference  
9 and realleged as if fully set forth herein;

10 (b) Physician Assistant R.D.'s operative reports for patient's L.W., N.C.,  
11 K.D. and S.M. were inadequate and failed to convey meaningful information; and

12 (c) Physician Assistant R.D.'s informed consent forms for patients L.W.,  
13 N.C., K.D. were improper and inadequate because, among other things, they falsely  
14 stated the liposuction surgery would be performed by respondent and Physician  
15 Assistant R.D. when, in truth and fact, the surgery was performed solely by  
16 Physician Assistant R.D.; and the written informed consent form for patient S.M.  
17 did not clearly indicate the liposuction surgery would be performed solely by  
18 Physician Assistant R.D..

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 **(General Unprofessional Conduct)**

21 69. Respondent is further subject to disciplinary action under sections 2227 and 2234, as  
22 defined by section 2234, of the Code, in that he has engaged in conduct which breached the rules  
23 or ethical code of the medical profession or which was unbecoming a member in good standing of  
24 the medical profession, and which demonstrates an unfitness to practice medicine, as more  
25 particularly alleged in paragraphs 18 through 68, above, are hereby incorporated by reference and  
26 realleged as if fully set forth herein.

27 ////

28 ////

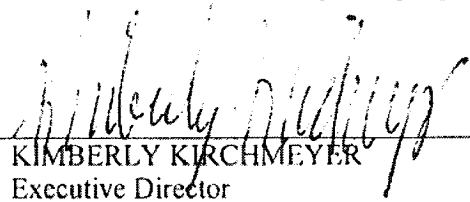


**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's License Number A35641, issued to respondent Jerrell Lawrence Borup, M.D.;
2. Revoking, suspending or denying approval of respondent Jerrell Lawrence Borup, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. Ordering respondent Jerrell Lawrence Borup, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: August 4, 2015

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
Complainant

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